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BUYING SMARTER, FASTER, BETTER: VITA'S GUIDE TO TECHNOLOGY PROCUREMENT

This policy document describes VITA's technology procurements for its own benefit or on behalf of other state agencies or institutions or such other agencies or institutions to the extent authorized by VITA. (§2.2-2007 of the *Code of Virginia*). In the event there is any conflict between this policy document and the Virginia Public Procurement Act (VPPA), the VPPA shall control.

SCOPE: State agencies and institutions, which means any agency, institution, board, bureau, commission, council, or instrumentality of state government in the executive branch listed in the appropriation act.

I. Background

On September 24, 2002, Governor Mark R. Warner unveiled the Commonwealth's Strategic Plan for Technology. In his words, "Whereas others have focused on a single, landmark initiative, Virginia is launching a comprehensive multi-faceted campaign to improve technology in the Commonwealth, attract investors to our growing technology-based economy, revolutionize government service delivery to our Virginia customers, and most importantly, provide significant cost savings to assist in closing the unprecedented \$5.3 billion budget crisis I inherited." Based on the Governor's vision for technology and three identified imperatives, Secretary of Technology George C. Newstrom identified a number of significant technology initiatives.

One initiative would improve the management of IT procurement by developing and implementing a best practice model for effective and timely IT procurements. The Department of Information Technology (DIT) accepted the challenge of developing a new technology procurement business process based on best practices that will:

- Enable the Commonwealth to consolidate and leverage its purchasing power for technology products and services;
- Embrace and implement innovative solutions and tools to meet the Commonwealth's business, technology, and procurement requirements;
- Emphasize customer and industry partner involvement, and;
- Increase the use and usefulness of statewide technology contracts by the Commonwealth's organizational entities.

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In order to achieve the initiative of the Commonwealth's Strategic Plan for Technology for DIT to develop and implement a best practice model for IT procurement, DIT (now VITA) launched its Procurement Reform ("ProReform") Project.

II. Purpose

The purpose of the ProReform Project is to develop a "best practices" model for centralized IT procurement that will be implemented in the new Virginia Information Technologies Agency (VITA). VITA's desired "to be" procurement environment will:

- implement processes that are fast and flexible;
- invite, promote, and sustain positive industry, industry partner and customer relationships;
- be paperless, one stop, and easy for customers and industry partners;
- be solutions—not product—oriented;
- be business driven and managed, not overshadowed by the procurement process itself;
- be enterprise oriented to effectively leverage the Commonwealth's buying power;
- have contract vehicles that are standardized, fair, and effective;
- be performance based;
- invite, promote, and sustain increased access, participation and partnerships with small-, minority-, and women-owned businesses;
- take advantage of industry's special knowledge of products and services;
- take into account "lessons learned" by the Department of General Services and identify common processes;
- be supported by VITA's internal organizational structure and management systems, and;
- Use procurement processes and contract vehicles to drive the Commonwealth towards a common enterprise architecture.

III. "Best Practices" Technology Procurement

As part of its ProReform project, VITA has developed a "best practice" model for information technology procurement. A "best practice" is a solution which combines originality and initiatives in procurement while achieving cost-savings. While a "best practice" procurement solution should provide its users best value, it must satisfy the requirements of the Virginia Public Procurement Act (VPPA), the Code of Virginia, the Commonwealth and its industry partners. A true "best practice" must also incorporate flexibility, common sense and a recognition that technology products and services are rapidly evolving. VITA will utilize new approaches to existing procurement methods in order to simplify and speed up the process for buying the Commonwealth's technology goods, services and systems. These new "best practice" solutions will ensure that the

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best goods, services and systems are obtained while improving the timeliness, efficiency, and quality of technology purchases.

VITA's "best practices" model for IT procurement will incorporate the following approaches:

A. VITA will utilize solution-oriented Request for Proposals (RFPs) for establishing statewide contracts and procuring technology solutions to provide best-value for the Commonwealth.

As part of its commitment to provide best value technology solutions to the Commonwealth, VITA will utilize solution-oriented RFPs to ask its industry partners to propose technology business solutions to Commonwealth-identified technology problems and goals. The Commonwealth's solution-oriented RFPs will define the business problem to be solved and take advantage of the private sector's expertise, experience and creativity in crafting a response to the problem. In addition, VITA and other Commonwealth agencies may offer solution-oriented RFPs where industry partners will be asked to provide a solution for only part of a procurement or in specific instances, requesting that the industry partner provide high-level concept-type solutions which are then evaluated based on the vendor-supplied detailed set of requirements. In some instances, the Commonwealth may utilize a Request for Information (RFI) prior to the issuance of a solution-oriented RFP to provide its industry partners with an opportunity to use their discretion and creativity to offer innovative solutions prior to the actual procurement.

B. VITA will use value-based or "best value" purchasing in its procurement evaluations to secure the best technology solution available.

The "best value" procurement selection method will be utilized in procuring technology goods and services. "Best value" is a process for selecting the most advantageous offer by evaluating and comparing all relevant factors in addition to cost so that the overall combination which best serves the interest of the Commonwealth is selected. Best value procurements ensure that expensive and complex technology solutions are procured with the highest level of quality, reliability and support from industry partners. Under value-based or "best-value" procurement principles, the Commonwealth is empowered to buy the best technology solution available, not simply the solution that costs the least. Business process reengineering, system design and technology implementation may be combined into a single solicitation. The criteria, factors and basis for the consideration of best value and the process for the consideration of best value shall be as stated in the procurement solicitation. (*Code of Virginia, §2.2-4301*). Factors which the Commonwealth may consider when pursuing best value procurement may include:

- Total cost of ownership (this includes operational, replacement and disposal costs.)

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- Performance history of vendor, if available
- Quality of goods or services
- Delivery
- Proposed technical performance
- Financial stability of the industry partner
- Cost of necessary training
- Qualifications of individuals proposed for a project.
- Realistic risk assessment of the proposed solution.
- Availability and cost of technical support
- Testing and quality assurance program.
- Benefits such as revenue generated and improved technical merit.
- Benefits such as the extent of inclusion of SWAM-D businesses.

C. VITA will develop long-term strategic partnerships with its industry partners.

VITA recognizes that the development of long-term technology procurement partnerships can help with risk sharing, while promoting a better understanding of the state's technology needs and promoting a continual involvement of services through long-term relationships. Partnering with industry partners can also expand the Commonwealth's knowledge base by the sharing of expertise, efforts and resources. A better understanding of the needs and requirements of both partners through the partnership process should lead to more efficiency and effectiveness on the part of the industry partner to meet the Commonwealth's technology needs. Under this strategic-partnership approach, VITA may publish a Request for Information (RFI) (for prequalification) for a particular technology solution or issue an RFP inviting its industry partners to become technology project partners. This approach will not focus on a specific project or ask for a cost proposal; instead, it asks industry partners to demonstrate their qualifications for delivering specific types of IT business solutions. The Commonwealth will then select only the industry partners that have the resources, expertise, creativity and financial ability to provide the best solutions for the project areas being proposed. Through this strategy, the Commonwealth can establish multiyear strategic alliances with its industry partners to obtain comprehensive IT services throughout the life of any given project.

In order for the long-term strategic partnerships between VITA and its industry partners to succeed, the technology procurement process must produce measurable results in an environment of integrity, ethics, and trust. Procurements should support the strategic goals of each partner while planning and implementing continuous improvements in products, services, processes and employee involvement. VITA's technology solicitations may include requirements that contract deliverables, outcomes and measures of success be identified and documented prior to the beginning of contract performance. Partners should openly communicate requirements, make special efforts to understand them, consider the capabilities of the other partner and strive to meet requirements all the time. In addition, the partners should specify requirements in

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phases, ensuring the ability to keep long-term projects on track. VITA and its industry partners should always promote a cooperative relationship in which conflicts are resolved through negotiation instead of legal remedies. VITA and its industry partners must work towards a mutual understanding and agreement of the contract deliverables, outcomes and how to identify measures of progress and success.

Long-term strategic partnerships between VITA and its industry partners must be established as the result of an open, equitable, interactive procurement process, which allows the procurement professional to communicate vital needs and expectations and potential contractors to present recommendations on contracting approaches, design, technical requirements and implementation prior to the contract being awarded. VITA will continuously provide partnership opportunities for its industry partners through its procurements of technology goods and services.

Partnerships can succeed if both parties can answer the following general questions in the affirmative:

- Are the partners sharing a common goal?
- Are each partners' expectations clearly stated upfront?
- Are the partners' actions consistent and reliable?
- Is there a real willingness from each partner to make the necessary commitment to the partnership in terms of time and energy?
- Are the partners accountable to each other for their actions?
- Do the partners understand and respect each other's responsibilities as well as honest differences between them?
- Is the partnership achieving synergy? In other words, is it more than the sum of the individual partners?
- Does each partner expect excellence from the other and give it in return?

D. VITA will utilize procurement solutions which share risks and benefits with its industry partners.

Designing, developing and installing a large-scale and complex technology business solution can be a costly and risky venture for the Commonwealth and its industry partners. VITA will utilize procurement solutions which spread the risks and benefits between the Commonwealth and its industry partners to avoid costly failures and improve the performance and outcomes of complex technology projects. Other states have devised new approaches in this area, such as paying industry-partners through savings generated by technology solutions or having an industry partner pay for a system's installation and reimbursing them through the purchase of services supplied. Other opportunities for VITA and its industry partners to share the risks and benefits of procurement solutions might include negotiation of the following clauses:

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- Force Majeure provisions
- Warranty provisions
- Ownership of intellectual property rights that were developed during a technology project.

E. VITA will provide and strictly enforce Codes of Conduct for its procurement professionals and its industry partners to ensure fairness, objectivity and professionalism in the technology procurement process.

These Codes of Conduct shall be a part of every technology procurement and will be included in every solicitation document and attached to every contract and agreement for the procurement of technology goods and services to which the VITA is a party.

I. The Framework of VITA's Reforms for Technology Procurement

A. Reformed Contractual Terms and Conditions

- **“Mandatory” Terms and Conditions will be limited to those Terms and Conditions mandated by the VPPA, the Code of Virginia, federal law or those specifically required by the technology project or business owner of the procurement.**

In an effort to streamline the development of its procurement partnerships and reduce the time needed for negotiations between VITA and its potential industry partners, all purchases made in accordance with this Guide and VITA authority will contain those general or “mandatory” terms and conditions that are mandated by the Virginia Public Procurement Act, the Code of Virginia, federal law or determined by VITA to be as “mandatory” terms and conditions. (These terms and conditions will be available on the internet at www.vita.va.gov). No other terms and conditions will be classified as “mandatory” except those expressly required by the technology procurement itself or those requested by the “business owner” of the technology procurement or specifically noted in the solicitation document.

Mandatory Terms and Conditions (required by the VPPA, Code of Virginia, federal law or VITA):

- Applicable Laws and Courts - §2.2-4364(E) of the *Code of Virginia*.
- Anti-Discrimination - §2.2-4343(1) (E), §2.2-4310 and §2.2-4311 of the *Code of Virginia*.
- Ethics in Public Contracting - §2.2-4367 *et seq.* of the *Code of Virginia*.
- Immigration Reform and Control Act of 1986 – federal law.
- Debarment Status - §2.2-4321 of the *Code of Virginia*.

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- Antitrust – federal law.
- Payment – §2.2-4363 and §2.2-4354 of the *Code of Virginia*.
- Modifications to the Contract - §2.2-4309 of the *Code of Virginia*.
- Default
- Taxes
- Use of Brand Names - §2.2-4315 of the *Code of Virginia*.
- Insurance - §2.2-4332 and §65.2-800 *et seq.* of the *Code of Virginia*.
- Announcement of Award - §2.2-4300 *et seq.* of the *Code of Virginia*.
- Drug-Free Workplace - §2.2-4312 of the *Code of Virginia*.
- Nondiscrimination of Contractors - §2.2-4343 (1) (H) of the *Code of Virginia*.
- Eva Business-to Government Vendor Registration - §2.2-4301 of the *Code of Virginia*.

- **“Desirable” Terms and Conditions**

Terms and Conditions that are “business driven” or “requirements driven” will be classified as “desirable” and can be negotiated. These “desirable” terms and conditions will include, but not be limited to, the following clauses:

- Advertising
- Asbestos
- Assignment and Delegation
- Assignment of Contract
- Audit
- Authorized Users
- Availability of Funds
- Award
- Award to Multiple Bidders
- Bid Acceptance Period
- Bid Bond or Guarantee
- Bidder Contact\Blanket Fidelity Bond
- Cancellation of Contract
- Certification, Testing Period/Hardware
- Certification, Testing Period/Systems
- Clarification of Terms
- Confidentiality (Commonwealth)
- Confidentiality (Industry Partner)
- Consequential Damages
- Contractor Registration
- Contractor/Subcontractor License Requirement
- Contractor’s Title to Materials
- Delivery

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- Delivery and Storage
- Delivery Notification
- Discounts
- Demonstration
- Equipment Environment
- Excessive Downtime
- Extra Charges Not Allowed
- Final Inspection
- Fitness
- Flame Retardant Certificate
- Force Majeure
- Identification of Bid/Proposal Envelope
- Indemnification
- Inspection of Job Site
- Installation
- Insurance (Additional)
- Latest Software Version
- Limitation of Liability
- Limitation of Use
- Liquidated Damages (goods and nonprofessional services)
- Liquidated Damages (furnish and install)
- Maintenance
- Minority/Women-Owned/Small Businesses Subcontracting and Reporting
- Name of Manufacturer/Shipping Point
- New Equipment
- Negotiation with Lowest Bidder
- New Equipment
- Operational Components
- Ordering
- Ownership of Intellectual Property
- Performance and Payment Bonds
- Prebid Conference, mandatory or optional
- Preventive Maintenance
- Price Escalation/descalation
- Prime Contractor Responsibilities
- Product Information
- Product Substitution
- Protection of Proprietary Software and other Proprietary Data
- Prompt Payment Discounts
- Quantities
- Qualification of Bidders/Offerors
- Qualified Repair Personnel
- Relocation of Equipment

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- Renewal of Contract
- Renewal of Maintenance
- Repair Parts
- Right to Hire
- Rights in Data
- Security Clearance – Capitol Police
- Security License
- Service Period (Extended)
- Service Period (Routine)
- Service Reports
- Software Upgrades
- Software Disposition
- Software Version
- Source Code
- Special Damages
- Special Educational or Promotional Discounts
- Subcontracts
- Termination for Convenience
- Termination for Default
- Terms of Software License
- Testing and Inspection
- Third Party Acquisition of Software
- Title to Software
- Transportation and Packaging
- Use of Recycled Materials
- Vendors Manual
- Warranty for goods and services
- Warranty for materials and equipment
- Warranty of Software
- Warranty Against Shutdown Devices
- Work Estimates (Time and Material Contracts)
- eVA Business-to-Government contracts
- Worksite Damages
- Other Clauses as Needed

- **Standardized Terms and Conditions:**

VITA will work with its industry partners and users to develop and maintain standardized terms and conditions which will be linked to commodity codes for the purchase of technology goods and services. Standardized terms and conditions which are linked to commodity codes should significantly reduce contract negotiation time and enable the Commonwealth and its industry partners to focus on negotiating the statement of work/deliverables in every contract instead of terms and conditions. VITA will work

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with its industry partners to establish, to the maximum extent practicable, standardized terms and conditions which are consistent with “customary commercial practices.”

- **Reasonable Limitation of Liability and Damages Clauses**

VITA will strive to develop and maintain reasonable Limitation of Liability clauses which are linked to commodity codes. In most instances, the limitation of liability clause used by VITA for the purchase of technology goods will be changed from unlimited liability to two times the purchase price of the goods being procured or two times the annual or total value of the contract. VITA will apply other liability limits, where appropriate, to the liability clause or in some instances, there may be no liability clause included. Further limitation of consequential and special damages will also be considered. VITA will work closely with its industry partners, the Office of the Attorney General and its own procurement professionals to craft liability clauses that are relevant to the goods or services being procured and which share the risk between the Commonwealth and its industry partners.

B. eVA will be the portal for VITA’s technology procurements

eVA is a statewide electronic procurement solution developed by the Commonwealth under the auspices of the Department of General Services. eVA will enable agencies and institutions to purchase goods and services over the Internet and to do so faster, easier and cheaper. eVA gives the Commonwealth “one electronic procurement face” enabling all agencies, institutions, localities, and vendors to participate in electronic procurement. All procurement solicitations are to be posted on the eVA internet portal as of July 1, 2002, as required by §2.2-4301 of the *Code of Virginia*, and eVA serves as the single vendor registration system for state agencies and institutions. VITA is working with DGS’ Division of Purchases and Supply as eVA develops full functionality of the on-line IFB and RFP processes. As eVA’s ability to perform these functions is fully realized and all technical interface issues are resolved, VITA will be utilizing eVA as the portal for VITA’s technology procurements.

Before accepting eVA transactions, each industry partner signs a Trading Partner Agreement (TPA), which outlines the fees to be assessed. Industry partners pay a one-percent transaction fee for all orders received through eVA. This fee is capped at \$500 per order. More information about eVA and how industry partners can register in eVA is available at <http://www.eva.state.va.us>.

Utilizing eVA as a portal for technology purchases will provide the following benefits for VITA and its industry partners:

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- Easier and faster purchasing processes and purchasing as the RFP and IFB on-line processes are in place;
- Decreases time-consuming administrative tasks associated with purchasing;
- Increases industry partners' access to business opportunities with the Commonwealth and allows for increased competition;
- Provides enterprise-wide purchasing information to aid supplier business decisions and leveraging the Commonwealth's buying power;
- Posting of bids, publishing policy and maintaining bid lists electronically saves labor, printing and mailing costs for the Commonwealth.
- VITA will utilize eVA as its primary means of partner communication, procurement and purchase tracking.
- Posting of industry partner catalogs.
- Electronic order receipt.
- eVA's data warehouse will allow VITA to capture information about technology products purchased statewide.

Utilizing eVA, VITA will utilize reverse auctioning as an additional procurement method. A reverse auction is an on-line procurement method used to obtain bids for commodities and services. In a reverse auction, something is purchased from the lowest responsive and responsible bidder (which is the "reverse" of a normal auction, wherein something is sold to the highest bidder). A reverse auction is typically conducted via the Internet where industry partners anonymously bid against each other for an item or group of items for which an agency has a requirement. Bidding takes place at a specified date and time and continues for a specified amount of time or until no more bids are accepted.

Reverse auctions complement strategic procurement techniques and have been shown to effectively leverage volume purchasing and drive real savings. VITA will work closely with the Department of General Services' Division of Purchases and Supply to develop a "best practices" reverse auctioning procedure through eVA for technology purchases.

In conjunction with eVA, VITA will utilize automation and technology at every stage of the technology procurement process in order to make its procurements fast, flexible and productive. In addition, through the increased use of technology and standardization, VITA will decrease the time and paperwork necessary for technology procurements.

Increased use of automation and technology in VITA's technology procurements will include, but not be limited to, the following:

- All proposals and bid responses will be in the form of on-line response templates which specifies specific information, terms or pricing needed from industry partners. Paper responses will no longer be used and after a period of time, will be not accepted by VITA.
- Paper posting of bids and proposals will be eliminated by VITA. Instead, posting will be accomplished through eVA and VITA's website. Potential and

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existing industry partners will be notified of potential procurement opportunities through these websites and through e-mail notification which is available to eVA's premium vendors.

- All RFP, IFB and other procurement method instructions and form templates will be available on-line at <http://www.vita.va.gov>. All requisition forms and templates needed to be completed by state agencies to send to VITA to begin technology procurements will be available on-line at <http://www.vita.va.gov>. All forms, templates, that are required for an industry partner to respond to an individual procurement will be available through hyperlinks provided in the procurement and can be accessed at <http://www.vita.va.gov>.
- Once standardized Terms and Conditions are developed, they will be available on-line on VITA's website and updated as needed, as well as linked to specific commodity codes, when appropriate. This will enable VITA's potential and existing industry partners to be well informed about the Terms and Conditions which will be appropriate for the purchase of certain commodity codes.
- VITA will work with its industry partners and customer agencies to develop a web-based "procurement dashboard" for tracking procurements through each stage. This dashboard will be available to VITA's industry partners and customer agencies so that the status of any technology procurement can be "tracked" and constantly available.

C. Prequalification of Industry Partners or products lists

§2.2-4317(A) of the *Code of Virginia* provides that "Prospective contractors may be prequalified for particular types of supplies, services, insurance or construction, and consideration of bids or proposals limited to prequalified contractors." Any prequalification procedure that may be utilized by VITA shall be established in writing and sufficiently in advance of its implementation to allow potential contractors a fair opportunity to complete the prequalification process. Prequalification does not guarantee that an industry partner will receive a contract or award, but rather pre-qualifies a potential industry partner to submit a bid or propose a solution for technology goods or service covered by the statement of work and terms and conditions contained in the prequalification document or Request for Information. (RFI). VITA will be the sole judge of when prequalification of industry partners or products is desired or required.

The RFI process for the prequalification of technology industry partners has proven to dramatically shorten the procurement cycle and allowed government agencies like VITA to make better informed business and technology decisions. The RFI process allows for the prequalification of an unlimited number of potential industry partners that have agreed to meet specific technology requirements and have agreed to the specific terms and conditions as defined in each particular RFI. If the RFI includes "desirable" terms and conditions, those terms and conditions will be subject to negotiation before award.

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At least 30 days before the date established for submission of the bids or proposals under the procurement of the contract for which the prequalification applies, VITA may advise its potential industry partners in writing that submitted a prequalification application whether that partner has been prequalified for that procurement. In the event an industry partner is denied prequalification, the written notification to the contractor shall state the reasons for the denial of prequalification and the factual basis of such reasons. A decision by VITA denying prequalification under the provisions of this section shall be final and conclusive. The potential industry partner may elect to appeal the prequalification decision as provided in §2.2-4357 of the *Code of Virginia*.

VITA may, when appropriate, utilize the prequalification process or RFI process to prepare lists of prequalified industry partners or products available to provide certain goods and services to shorten the procurement process. Prequalified lists for technology goods and services may be established. These technology product or services lists will be a list of products and services that have been tested and approved based on written prequalification specifications and procedures. Prequalified industry partner lists will be a list of those partners whose capabilities to provide goods or services has been evaluated and approved based on written prequalification specifications and procedures.

D. VITA will utilize NIGP's 5-digit commodity code structure for procurements of goods through eVA as well as for procurement tracking and reporting.

The National Institute of Governmental Purchasing (NIGP) has established a 5-digit commodity code structure which is a set of numbers used to identify commodities and services procured by states. All eVA transactions are based on this 5-Digit commodity code. The 5-Digit class-item Code is an expanded version of the 3-digit class Code. Currently, it contains over 7,600 descriptions. This level categorizes vendors by class-item to allow eVA to automate bidder selection, produce no-bid response reports, vendor performance reports, purchase history, etc. by commodity code. The North American Industry Classification System (NAICS) has now been cross-referenced to the NIGP 5-Digit Code. The NAICS replaced the SIC (Standard Industrial Code.) The NIGP commodity code structure will be used to:

- Register industry partners according to commodity codes
- Maintain industry partner files;
- Assign responsibilities for the procurement of commodity code groupings to VITA's procurement professionals when appropriate;
- Communicate with VITA's potential and existing industry partners;
- Allow VITA to order and track technology procurements through eVA effectively;
- For a list of NIGP commodity codes utilized in eVA, visit <http://vbo.dgs.state.va.us/VBO/NIGPCodes.asp>.

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E. VITA will utilize statewide contracts for the purchase of many technology goods and services. Statewide contracts will be developed in accordance with VITA's enterprise architecture recommendations.

VITA will utilize statewide contracts for the purchase of most hardware, software and computer peripherals. These statewide contracts will leverage the Commonwealth's buying power and consolidate purchasing and enable VITA to negotiate volume discounts. These statewide contracts will be available for agency technology purchasing needs through eVA and on VITA's website.

V. Authority and Responsibilities

A. VITA's Technology Procurement Authority:

In an effort to centralize information technology procurement, House Bill 519 was enacted and became effective on July 1, 2002. (See [House Bill 519](#), Chapter 579, 2002 Acts of Assembly.) House Bill 519 amended [§2.2-1303\(C\)](#) of the *Code of Virginia* to transfer sole authority for the procurement of information technology goods and services to the Department of Information Technology (DIT) from the Department of General Services (DGS). DIT had already been vested with authority to procure all telecommunications goods and services for state agencies. House Bill 519 provided the means for DIT to make significant improvements and reforms in the existing business processes for technology procurement. Under House Bill 519, DIT was authorized to develop policies and procedures that address the unique characteristics of technology procurements and to implement procurement procedures, solutions and tools for use in "best practices" technology procurements. As of July 1, 2003, VITA is authorized by [§2.2-2007](#) of the *Code of Virginia* to procure technology and telecommunications goods and services of every description for its own benefit or on behalf of other state agencies and institutions. VITA's procurement processes and procedures are subject to the Virginia Public Procurement Act (VPPA) and the Code of Virginia. The processes and procedures reflected in this Manual are not subject to or modeled after those processes and procedures in the Division of Purchases and Supply's (DPS's) Agency Procurement and Surplus Property manual (APSPM). The APSPM should not be utilized when purchasing technology or telecommunications goods and services.

- As of July 1, 2003, [§2.2-2007](#) of the *Code of Virginia* will replace [§2.2-1303\(C\)](#) and [§2.2-1303\(D\)](#) of the *Code of Virginia* and will provide VITA's authority and responsibilities for the procurement of information technology and telecommunications goods and services:

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§ [2.2-2007](#). Procurement of information technology and telecommunications goods and services; computer equipment to be based on performance-based specifications.

A. Information technology and telecommunications goods and services of every description shall be procured by (i) VITA for its own benefit or on behalf of other state agencies and institutions or (ii) such other agencies or institutions to the extent authorized by VITA. Such procurements shall be made in accordance with the Virginia Public Procurement Act (§ [2.2-4300](#) et seq.) and regulations as may be prescribed by VITA.

The CIO shall disapprove any procurement that does not conform to the statewide information technology plan or to the individual plans of state agencies or public institutions of higher education.

B. All statewide contracts and agreements made and entered into by VITA for the purchase of communications services, telecommunications facilities, and information technology goods and services shall provide for the inclusion of counties, cities, and towns in such contracts and agreements. Notwithstanding the provisions of § [2.2-4301](#), VITA may enter into multiple vendor contracts for the referenced services, facilities, and goods and services.

C. If VITA, or any agency or institution authorized by VITA, elects to procure personal computers and related peripheral equipment pursuant to any type of blanket purchasing arrangement under which public bodies, as defined in § [2.2-4301](#), may purchase such goods from any vendor following competitive procurement but without the conduct of an individual procurement by or for the using agency or institution, it shall establish performance-based specifications for the selection of equipment. Establishment of such contracts shall emphasize performance criteria including price, quality, and delivery without regard to "brand name." All vendors meeting the Commonwealth's performance requirements shall be afforded the opportunity to compete for such contracts.

D. This section shall not be construed or applied so as to infringe upon, in any manner, the responsibilities for accounting systems assigned to the Comptroller under § [2.2-803](#).

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B. Information Technology Projects which exceed \$100,000 must be approved by the Chief Information Officer

[§2.2-2002](#) of the *Code of Virginia* requires that VITA review information technology projects proposed by state agencies and institutions exceeding \$100,000, and recommend whether such projects be approved or disapproved. The CIO shall disapprove projects between \$100,000 and \$1 million that do not conform to the statewide information plan or to the individual plans of state agencies or institutions of higher education. [§2.2-2002\(A\) \(9\)](#) of the *Code of Virginia* provides as follows:

[2.2-2002](#). *Powers of the CIO.*

A. In addition to such other duties as the Board may assign, the CIO shall:

9. Direct the development of policies and procedures that require VITA to review information technology projects proposed by state agencies and institutions exceeding \$100,000, and recommend whether such projects be approved or disapproved. The CIO shall disapprove projects between \$100,000 and \$1 million that do not conform to the statewide information plan or to the individual plans of state agencies or institutions of higher education.

C. Procurement Approval for Major Information Technology Projects by CIO

[§2.2-2015](#) of the *Code of Virginia* provides that the Chief Information Officer (CIO) shall have final approval authority over the procurement of goods or services involved in a major information technology project:

[§2.2-2015](#) *Procurement approval for major information technology projects.*

Upon approval of the Board of the project development proposal involving a major information technology project that requires the procurement of goods or services, the agency shall submit a copy of any Invitation for Bid (IFB) or Request for Proposal (RFP) to the Division. The project management specialist shall review the IFB or RFP and recommend its approval or rejection to the CIO. The CIO shall have the final authority to approve the IFB or RFP prior to its release and shall approve the proposed contract for the award of the project.

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D. Effective July 1, 2003, VITA serves as the successor in interest to the Department of Information Technology, the Department of Technology Planning (DTP), and the Virginia Information Providers Network (VIPNet) Authority.

All contracts held by DIT, DTP and VIPNet will be held by VITA as of July 1, 2003, as the successor in interest to these three abolished entities pursuant to House Bill 1926 and Senate Bill 1247 (2003) as follows:

12. That as of the effective date of this act, the Virginia Information Technologies Agency shall be deemed the successor in interest to the Department of Information Technology, the Department of Technology Planning and the Virginia Information Providers Network Authority. Without limiting the foregoing, all right, title and interest in and to any real or tangible personal property vested in the Department of Information Technology, the Department of Technology Planning and the Virginia Information Providers Network Authority as of the effective date of this act shall be transferred to and taken as standing in the name of the Virginia Information Technologies Agency. (Acts of Assembly, Chapters 981 and 1021 (2003).)

E. VITA has the authority to establish contracts for the purchase of personal computers and related devices by public school teachers for use outside the classroom.

House Bill 1761 (2003) authorized VITA, effective July 1, 2003, to establish contracts for the purchase of personal computers and related devices for use by public school teachers for use outside the classroom. VITA has administrative responsibility for House Bill 1761 and will develop processes for ordering and tracking the purchase of personal computers and related devices by public school teachers. VITA will also assist with the resolution of customer (teacher) complaints and contract issues. VITA will negotiate modifications to existing PC contracts, if necessary, or establish new PC contracts as needed to include provisions which support the bill.

House Bill 1761 provides as follows:

§ [2.2-1303](#). Additional powers and duties relating to communications equipment and services and information technology equipment and services.

E. The Department may establish contracts for the purchase of personal computers and related devices by public school teachers for use outside the classroom. The computers and related devices shall not be purchased with public funds, but shall be paid for and owned by teachers individually

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provided that no more than one such computer and related device per year shall be so purchased.

(Acts of Assembly, Chapter 352 (2003).)

VI. Delegated Purchasing Authority

The CIO will establish the general technology procurement delegation amounts for each agency. The general technology procurement delegation establishes the maximum authorized dollar limits or other criteria for purchases of technology goods for an agency without such purchase having to be performed by or approved by VITA. The CIO may decrease or increase the delegation amount based upon merit, need and conformance to VITA's technology procurement procedures as well as the components of each agency's strategic technology plan. The CIO may award delegated authority to agencies based on commodity code instead of amount, when appropriate, thus enabling agencies to purchase as needed from certain commodity codes without having such purchases be performed by or approved by VITA. Awarding and administration of contracts for amounts under the agency's general delegation limit or based on such commodity codes as delegated by the CIO shall be the responsibility of the individual agency.

Procurement of all technology goods above an agency's delegated authority limits or outside of the specific commodity codes assigned to each agency by VITA must be handled by VITA. An agency should not divide requirements, orders or amounts of technology purchases to keep them under the general technology delegation amount or outside of specific delegated commodity codes. In determining the amount of any technology procurement, life-cycle costs, which include the expenses to support and maintain a system or piece of equipment over its expected lifespan (or total cost of ownership) should be included over and above the initial cost of the procurement.

Several delegations of purchasing authority for technology goods and services were awarded to agencies and institutions by the Departments of Information Technology and/or General Services prior to June 30, 2003. Effective July 1, 2003, those existing procurement delegations have been carried forward by VITA and will remain in full force and effect until such time as VITA reviews, revises, or rescinds them in the context of technology purchases. For sole source procurements, all agencies will have delegated authority up to \$100,000 for procurement of technology goods. (See Sole Source Procurement sections in this Policy document.) If an agency or institution has been designated as an in-scope agency for IT consolidation into VITA, delegated purchasing authority will be reviewed at the time the agency IT is consolidated into VITA. As part of the process of negotiating a Memorandum of Agreement between the agency and VITA, it is anticipated that the agency will retain delegated purchasing authority for application software (no hardware, servers, computers, etc.)

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As a mandatory requirement for retaining existing delegations of purchasing authority, VITA has developed a data collection form which agencies and institutions must submit to VITA, effective July 1, 2003, every time delegated purchasing authority is exercised by the agency. (See "Delegated Data Collection Form" below.) The Agency Information Technology Resource (AITR) should complete the Data Collection Form and submit an electronic version or photocopy to VITA within 10 business days of the contract award.

Use of delegated technology purchasing authority is subject to audit by VITA at any time. All technology procurements made by an agency under their delegated authority limit are subject to audit by VITA at any time at VITA's discretion. Should an audit reveal that an agency has abused its discretion or violated the VPPA or Code of Virginia in purchasing technology pursuant to its delegated authority; such delegation may be rescinded or reduced at any time. The Data Collection Form is subject to revision by VITA at any time.

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Delegated Data Collection Form Virginia Information Technologies Agency (current 7/1/03)

TO BE COMPLETED BY AGENCY INFORMATION TECHNOLOGY RESOURCE (AITR)

INSTRUCTIONS: The AITR should complete basic information about the use or intended use of the agency's delegated technology purchasing authority.

Agency Name _____

Agency Code _____

Description of the Technology Product or Service For Which The Delegation Has Been
or Will Be Used

Commodity Code _____

Total Cost of the Technology Product or Service Purchased or To Be Purchased as
Calculated Over the Entire Lifecycle of the Procurement or the Project
\$ _____

Vendor/Supplier _____

Print Name of AITR _____

AITR Signature _____

Date _____

**Please submit an electronic version or a photocopy of the Data Collection Form to
the Virginia Information Technologies Agency within 10 business days of the
contract award. Thank you!**

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Seeing the Whole Technology Procurement Picture

The technology procurement process is much more than buying technology or telecommunications goods and services. It includes all activities from planning, preparation of requirements and processing of a requisition, solicitation, evaluation, award and contract formation, to receipt and acceptance of delivery, payment, inventory tracking and goods and services disposition. Regardless of whether the technology product or service required is processed by the agency under its delegated authority, purchased off a statewide contract or sent to VITA for procurement, the workflow is essentially the same. Here are some things that need to be considered when making any technology purchase:

- Identify the technology business need and the technology product or service that will best fulfill that technology need. Identify a technology solution, not a specific product, which would meet that technology need. Keeping in mind cost containment, what is the product or service that that best fulfills the job requirements? This may require that the agency purchasing personnel or VITA personnel meet with end user(s) to identify needs, craft requirements and propose technology solutions.
- Develop specifications that describe the characteristics of a technology product, service or solution being sought. Consideration should be given to suitability and to overall cost effectiveness in addition to acceptability and initial price. By their nature, specifications set limits and thereby eliminate or restrict items that are outside the boundaries drawn. Technology specifications should be written to encourage, not discourage, competition consistent with seeking overall economy for the purpose and technology solution intended. The goal is to invite maximum reasonable competition while procuring the best technology solution for the Commonwealth.
- Bid or seek price quotations from a number of possible suppliers as established by the Virginia Public Procurement Act and this manual.
- Review the bids or proposals to determine overall economy for the intended use of the technology product or scope of the services. The award should always go to the lowest responsive and responsible bidder who provides the best value to the Commonwealth and who meets the specifications of the technology product or services requested or to the responsive proposer who offers the most comprehensive, best value technology solution for the Commonwealth.

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- Purchase or contract for the technology product or service in accordance with Virginia Public Procurement Act and this manual.
- Receive the technology product or service and verify that it meets the requirements of the purchase order or contract and provides the intended technology solution.
- Process the invoice through appropriate channels in a timely manner.
- Keep good records that detail all of the above considerations. Public technology purchasing requires that most records be made available for public inspection upon request, so good detailed record keeping is essential.

I. Specifications

A specification is a description of a technology product or service a user seeks to procure and is also a description of what an industry partner must offer to be considered for an award. Specifications are the primary means of communication between an agency and its industry partners. Specifications must be clear and understandable. They must permit competition between products of equal quality. Descriptions may include a statement regarding the qualitative nature of the purchase and should identify minimum essential characteristics and standards to which the purchase must conform if it is to satisfy its intended use. "Performance" requirements or specifications should be identified. "Design" or "construction" specifications may be written where minimum mandatory design characteristics are appropriate.

Specifications control:

- the quality level of the product;
- the amount of competition;
- the suitability of the product or service for the job to be done; and
- the method of evaluation used in making an award and in determining the best value bid for the purchase.

A. Characteristics of an Effective Specification:

- **SIMPLE:** Avoid unnecessary detail, but be complete enough to ensure that requirements will satisfy their intended purpose.
- **CLEAR:** Use terminology that is understandable to the agency and its industry partners. Use correct spelling and appropriate sentence structure to eliminate confusion. Avoid legalese type language and jargon whenever possible.
- **ACCURATE:** Use units of measure that are compatible with industry standards. All quantities and packing requirements should be clearly identified.

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- **COMPETITIVE:** Identify at least one or more commercially available brands, makes, or models (whenever possible) that will satisfy the intended purpose. Avoid unneeded "extras" that could reduce or eliminate competition and increase costs.
- **FLEXIBLE:** Avoid inflexible specifications which prevent the acceptance of a bid or proposal that could offer greater performance for fewer dollars. Use approximate values such as dimensions, weight, speed, etc. (whenever possible) if they will satisfy the intended purpose. If approximate dimensions are used, it should be within a 10% rule of thumb unless otherwise stated in the solicitation document.

B. Brand Name or Equivalent Specifications

- [§2.2-4315](#) of the *Code of Virginia* specifically addresses the use of brand names in specifications:

[§ 2.2-4315](#). *Use of brand names.*

Unless otherwise provided in the Invitation to Bid, the name of a certain brand, make or manufacturer shall not restrict bidders to the specific brand, make or manufacturer named and shall be deemed to convey the general style, type, character, and quality of the article desired. Any article that the public body in its sole discretion determines to be the equal of that specified, considering quality, workmanship, economy of operation, and suitability for the purpose intended, shall be accepted.

- Brand name or equivalent specifications may be used when the purchasing professional or business owner determines that:
 - no other design, performance, or qualified product list is available;
 - time does not permit the preparation of another form of purchase description, not including a brand name specification;
 - the nature of the product or the nature of the requirements makes use of a brand name or equivalent specification suitable for the procurement; or
 - use of a brand name or equivalent specification is in the Commonwealth's best interests.
 - Designation of Several Brand Names. Brand name or equivalent specifications shall seek to designate three, or as many different brands as are practicable, as "or equivalent" references and shall further state that substantially equivalent products to those designated may be considered for award.

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- **Required Characteristics.**

Unless the purchasing professional or technology business owner determines that the essential characteristics of the brand name included in the specifications are commonly known in the industry or trade, the brand name or equivalent specifications shall include a description of the particular design, functional, or performance characteristics required.

- **Nonrestrictive Use of Brand Name or Equivalent Specifications.**

Where a brand name or equivalent specification is used in a solicitation, the solicitation shall contain explanatory language that the use of a brand name is for the purpose of describing the standard of quality, performance, and characteristics desired and is not intended to limit or restrict competition.

- **Determination of Equivalents**

Any prospective bidder or offeror may apply, in writing, for a pre-bid/proposal determination of brand name equivalence by the VITA purchasing professional who is assigned to the procurement. If sufficient information is provided by the prospective bidder/proposer, the purchasing professional may determine, in writing and prior to the bid opening time, that the proposed product would be equivalent to the brand name used in the solicitation.

- **Specifications of Equivalents Required for Bid Submittal.**

Industry partners proposing equivalent products must include in their bid/proposal submittal the manufacturer's specifications for those products. Brand names and model numbers are used for identification and reference purposes only.

- **Performance-based specifications when procuring personal computers and related peripheral equipment pursuant to any type of blanket purchasing arrangement shall be established without regard to “brand name.”**

[§2.2-2007\(C\)](#) of the *Code of Virginia* provides as follows:

C. If VITA, or any agency or institution authorized by VITA, elects to procure personal computers and related peripheral equipment pursuant to any type of blanket purchasing arrangement under which public bodies, as defined in § 2.2-4301, may purchase such goods from any vendor following competitive procurement but without the conduct of an individual procurement by or for the using agency or institution, it shall establish performance-based specifications for the selection of equipment. Establishment of such contracts shall emphasize performance criteria

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including price, quality, and delivery without regard to "brand name." All vendors meeting the Commonwealth's performance requirements shall be afforded the opportunity to compete for such contracts.

(§2.2-2007(C) of the *Code of Virginia* will replace §2.2-1301.1 “Procurement of computer equipment to be based on performance-based specifications as of July 1, 2003.)

C. Assistance by industry partners in developing procurement specifications or requirements

- A potential or existing industry partner may provide technical assistance to an agency free of charge in developing procurement specifications or requirements. Those specifications or requirements may be provided to other industry partners for comments before the solicitation is issued.
- A state agency may not accept a bid or proposal or award a contract to a vendor who received compensation from the agency to participate in the preparation of the specifications or request for proposals on which the bid or contract is based. An independent contractor employed or otherwise paid by VITA to design a project, develop a scope of work, write specifications, or otherwise define contract requirements is not eligible to compete for or receive the resulting contract, except in cases of emergency. In addition, the industry partner who provided such planning services for a fee may not be a subcontractor or supplier for the industry partner who is awarded the contract or any of that partner’s subcontractors, however far removed. (§2.2-4373 of the *Code of Virginia*.)

§2.2-4373 of the *Code of Virginia* provides as follows:

§2.2-4373. Participation in bid preparation; limitation on submitting bid for same procurement.

No person who, for compensation, prepares an invitation to bid or request for proposal for or on behalf of a public body shall (i) submit a bid or proposal for that procurement or any portion thereof or (ii) disclose to any bidder or offeror information concerning the procurement that is not available to the public. However, a public body may permit such person to submit a bid or proposal for that procurement or any portion thereof if the public body determines that the exclusion of the person would limit the number of potential qualified bidders or offerors in a manner contrary to the best interests of the public body.

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II. VITA's Procurement Methods

VITA has streamlined the procurement methods proscribed by the Virginia Public Procurement Act in accordance with its "best practices" recommendations for information technology and telecommunications procurements and the Commonwealth's 2002-2006 Strategic Plan for Technology. As procurements of technology goods and services through VITA must be in accordance with the Virginia Public Procurement Act, these new processes follow the VPPA and the Code of Virginia in every respect.

A. The RFP Process (Competitive Negotiation) for technology purchases over \$50,000

- **Justification/Documentation**

As an RFP is not the preferred method of procurement for goods and services in the Commonwealth, a determination is required in advance, in writing, to state why competitive sealed bidding is not practicable or not fiscally advantageous. This determination must be signed by the Governor or his designee. ([§2.2-4301](#) of the *Code of Virginia*).

- **Form**

RFP instructions and template proposal responses will be streamlined through use of on-line RFP instructions and forms, hyperlinks to template forms for responses and mandatory use of electronic responses via eVA. Mandatory language and requirements will be kept to a minimum and proposal responses and content shall be limited to a maximum predetermined number of pages or to completion of a template form. All responses will be submitted and received on-line through eVA.

- **Requirements**

RFPs, to be truly solution-oriented, will briefly state the Commonwealth's business need or describe the technology problem to be solved and/or will provide minimum required specifications. The use of solution-oriented RFPs will allow VITA's industry partners who are technology subject matter experts to use their discretion and creativity to offer innovative cost-effective technology solutions to the Commonwealth. VITA may utilize Requests for Information (RFIs), when appropriate, to give its industry partners opportunities to craft solutions prior to the actual procurement and to allow for responses which may combine solution requests with needed exact specifications and deliverables. RFIs may also be utilized to determine a list of potential industry partners who would be prequalified as solution-providers for certain types of technology problems or identified needs.

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- **Notice**

Pursuant to the VPPA, all RFPs must be posted for a minimum of 10 calendar days prior to the due date for receipt of proposals. (§2.2-4303 of the *Code of Virginia*). Notice will be posted on eVA and VITA's website as well as through a newspaper of general circulation. Notice will also be sent through e-mail notification to VITA's industry partners which are registered eVA premium vendors. Public openings of proposals are not required.

- **Terms and Conditions**

VITA will include standardized terms and conditions in the RFP, whenever possible, which have been standardized per the commodity code(s)/solution being purchased. Mandatory terms and conditions will be limited to those terms and conditions expressly required by the VPPA, the Code of Virginia, federal law, the technology solution being procured or the business owner. All other terms and conditions will be listed as "desirables" in the RFP solicitation document and will be subject to negotiation between the Commonwealth and its industry partner(s) proposing the overall best-value solution. All industry partners will be familiar with and have on-line access to VITA's standardized Terms and Conditions (grouped per commodity code, where possible), thus eliminating the need for prolonged negotiations during the RFP process. All parties will have an "up-front" and informed look at the terms and conditions which may be included prior to any solicitation.

- **Evaluation**

Solution-oriented RFPs will contain "best value" evaluation factors such as total costs of ownership (operational and replacement costs) or life-cycle costs, performance history of industry partners, quality of goods and services being proposed, delivery, proposed technical performance, financial stability of industry partners, cost of necessary training, qualifications of individuals proposed for a project, realistic risk assessment of the proposed solution, availability and cost of technical support and testing and quality assurance programs. RFP awards will be determined by evaluating and comparing all relevant factors in addition to price so that the overall combination of these factors that best serves the Commonwealth's technology interests, in its opinion, will be selected. Price may be one of the factors considered, but does not have to be the determining factor.

- **Negotiation**

Negotiations will be conducted with one or more "best value" selected offerors who are deemed to be "fully qualified" and "best suited" in the Commonwealth's opinion on the basis of the "best value" factors stated in the RFP. After negotiations have been conducted with each offeror so selected, VITA may select the offeror which, in

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its opinion, has made the best proposal and award the contract to that offeror or offeror(s).

- **Evaluation/Negotiation Procedure for RFP's**

Proposal evaluation and negotiations held for Request for Proposals may be based on the following procedures:

- The Evaluation Committee is made of up to 5 members with the preferred number being 3. The Evaluation Committee should consist of technical, business, and procurement related expertise.
- The procurement professional will chair the Evaluation Committee.
- The Procurement Chair will provide detailed instructions including the evaluation timeline to the Evaluation Committee. Members of the Evaluation Committee are expected to adhere to the evaluation timeline at all times. The Evaluation Committee reviews proposals against mandatory submission requirements. If a proposal is missing required information, notify the procurement professional named in the procurement to allow for an opportunity for offeror to provide information.
- The Evaluation Committee will decide if oral presentations are necessary to clarify any ambiguities or omissions in the proposals, if so; the Procurement Chair is contacted to schedule the presentation(s).
- Proposals are reviewed for the first time by the Evaluation Committee and those determined to be the best proposals based upon the evaluation criteria are selected by each member.
- An Evaluation consensus meeting is scheduled by the procurement chair to allow the Evaluation Committee to discuss and come to a consensus to determine, based on the evaluation criteria and their opinion, the best overall proposals.
- The Evaluation Committee determines issues to negotiate and provides those issues in writing to the procurement chair.
- The procurement chair will schedule a date(s) for negotiations.
- Negotiations are conducted by one either (1) technical expert knowledgeable of the product, the Procurement Professional or a team consisting of the technical expert, the procurement professional and a representative from VITA's Division of Legal and Legislative Services. (Any changes to offerors proposals during negotiations must be in writing and signed by the offeror and the negotiator.)
- After negotiations are complete, the Evaluation Committee meets to review and evaluate any changes to the offerors proposal(s) during negotiations based on the evaluation criteria and determines the best proposal(s) in their opinion for award of contract.

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- **Notice of Award/Award**

VITA will post the Notice of Award for 10 calendar days via eVA and the VITA website as required by the VPPA and as provided for in the RFP solicitation document. Publication of Notices of Intent to Award shall no longer be utilized by VITA in an attempt to streamline and reduce the amount of time involved in the RFP process. Multiple RFP awards may be awarded if provided for in the RFP and in the contract terms and conditions.

- **Automation**

As all RFPs will be conducted through eVA, VITA will no longer conduct public openings of proposals. eVA's on-line "lock box" availability provides for posting of all RFP solicitations and awards for VITA's industry partners without having "on-site" paper posting and openings. All RFP proposal responses will be submitted electronically via eVA.

- **Changes/Modifications to the RFP**

Any changes or modifications to the RFP will be issued as an addendum to all prospective offerors in writing. Unless an RFP is amended in writing, it remains unchanged.

Directions to Agencies considering use of solution-oriented RFPs for procurements of technology goods and services: (Agencies with delegated authority of \$50,000 or less should send these procurements directly to VITA by completing the procurement requisition form available on VITA's website at <http://www.vita.va.gov>).

Before preparation of the RFP, agencies should do the following:

- 1. Prepare a written determination for signature by the Governor or his designee stating why competitive sealed bidding is not practicable or fiscally advantageous for this technology procurement.**
- 2. Review the statewide technology contracts available on VITA's website (<http://www.vita.va.gov>) to determine that there is no statewide technology contract available for the particular technology good or service to be procured. Statewide contracts can offer significant price discounts over individual procurements.**

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3. Any technology procurement (even if it is within your agency's delegated authority) can be done by VITA for your agency. Complete the online requisition form available on VITA's website and e-mail the form to VITA if you would prefer that VITA conduct any particular technology procurement.

In preparing the RFP document:

1. Use the online available RFP template forms and instructions available on eVA and VITA's website or your own form.
2. Briefly state the business need or technology problem to be solved along with any minimum required specifications or requirements.
3. Include all mandatory and desirable terms and conditions

Posting of the RFP:

1. RFPs must be posted for a minimum of 10 calendar days prior to the due date for receipt of proposals.
2. Notice will be posted on eVA and VITA's website.

Evaluation of proposals received: Utilizing the "best value" evaluation factors included in your RFP, evaluate each proposal received to determine which offerors are proposing the "best value" solution to your business need or technology problem.

Negotiation: Conduct negotiations with the "best value" selected offerors

Contract Award: Post the notice of award for 10 calendar days via eVA and VITA's website.

The VITA requisition form for requesting information technology procurements is on the next page.

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COMMONWEALTH OF VIRGINIA INFORMATION TECHNOLOGY PROCUREMENT REQUISITION

Date: _____/Requisition No. _____

(Agency Code followed by month, date and year,
i.e., 138-061903)

Agency & Address:

Ship to address:

Bill to address:

_____/_____/_____
Agency Contact Name, Telephone Number and E-mail Address

Approval Signature: _____
(I certify that funds are available for this procurement)

1. **Can service or good be procured on statewide contract?**

2. **Date needed?**

3. **Furnish and Install? Yes** _____ **No** _____

4. **Commodity code(s) #?**

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5. Estimated total cost?

\$ _____

6. Good(s) to be procured and specifications:

Line Item	Commodity Code #	Item/followed by specifications	Quantity	Unit	Unit Bid	Total

7. Is this procurement to solve a particular business need or technology problem for the agency, if so, include any unique capabilities or requirements that your agency has identified that should be part of the solution?

8. If services to be procured, 1) provide scope of work or problem to be resolved and 2) solution or results desired:

9. Provide any mandatory terms and conditions that are business or operational related:

10. Provide any desirable terms and conditions that are business or operational related:

11. Identify any factors to be considered in evaluation criteria, total cost of ownership, or best value award:

12. If proprietary or competitive negotiations provide justification to include Agency head approval:

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B. The IFB Process (Competitive Sealed Bidding) for technology purchases over \$50,000

- **Form**

A written IFB will be issued and posted on eVA and the VITA website containing or incorporating by reference the specifications and contractual terms and conditions applicable to the specific technology procurement including any requisite qualifications of potential contractors. The eVA on-line IFB process will be utilized with streamlined template responses and template bids to be completed by bidders. All technical/price bids will be submitted to a sealed lock box in eVA.

- **Notice**

IFBs will be publicly posted and available through eVA and VITA's website for at least 10 calendar days prior to receipt of bids. In addition, VITA will utilize eVA's premium vendor e-mail "push-out" technology and premium vendor notice capabilities to solicit bids directly from potential or prequalified industry partners via e-mail.

- **Terms and Conditions**

IFB's will include standardized terms and conditions which are standardized per the commodity code/solution being purchased, if practicably available. Mandatory terms and conditions will be limited to those terms and conditions expressly required by the VPPA, the Code of Virginia, federal law, the specific requirements of the technology solution or product being procured or the business owner. All industry partners will be familiar with or have access to VITA's standardized Terms and Conditions per commodity code. All terms and conditions which are applicable to each commodity code will be posted on VITA's website.

- **Public Opening/Announcement**

The public opening and announcement of all bids received, tabulation of bids and awards will be accomplished through eVA.

- **Evaluation**

Evaluation of bids will be based upon the requirements and specifications set out in the IFB, which may include special qualifications of potential contractors, life-cycle costing, total cost of ownership, value analysis, and any other criteria such as inspection, testing, quality, workmanship, delivery and suitability for a particular purpose.

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- **Award**

The award will be made to the lowest responsive and responsible bidder. When the terms and conditions of multiple awards are so provided in the IFB, awards may be made to more than one bidder. Posting of awards will be through eVA and the VITA's website and as prescribed in the terms and conditions of the IFB document and will be publicly available for a minimum of ten (10) days.

- **Automation**

All IFB instructions and will be available on-line through eVA. IFB example templates will be available on VITA's website at <http://www.vita.va.gov>. In addition, the IFB solicitation document may include hyper-linked instructions or template/spreadsheets that should be included in the IFB bid responses. IFB bid responses may be limited to VITA-provided on-line templates or spreadsheets when appropriate. Only electronic bid responses submitted via eVA will be considered for award.

- **Two-step IFB's**

Two-step IFB solicitations is a method of procurement designed to expand the use and obtain the benefits of competitive sealed bidding where the lack of adequate specifications or rapid changes in the state of the art or technology make it more advantageous to the Commonwealth to request unpriced technical proposals before making an award determination based on price. Step one of the two-step IFB procedure involves the submission of unpriced technical proposals only. These technical proposals are then evaluated to determine which are acceptable in accordance with the published qualification criteria. Step two involves an IFB being prepared and distributed only to those bidders whose technical proposals have been qualified and accepted in the first part of the solicitation. In Step two, the IFB will include a pricing schedule, reference to the request for a technical proposal, and a specific date and time for receipt of sealed bids. A public opening of all bids received is held via eVA. Bids are tabulated and the contract is awarded to the lowest responsive and responsible bidder.

There is no negotiation in the two-step IFB process; however, the Commonwealth at its option may request additional information from a bidder to clarify material contained in any technical proposal.

All other IFB procedures such as notice, form, etc. that apply to an IFB will apply to a two-step IFB and combined two-step IFB (see below).

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- **Combined Two-Step IFBs**

The above-referenced two step IFB procedure can be combined to require the submission of the technical proposal and price simultaneously in separate sealed envelopes. The envelopes are labeled “Technical Proposal” and “Bid Price” and include the bidder’s name and address and the bid reference number. The envelopes containing the technical proposals are opened and evaluated. The proposals which meet the bid criteria are selected. The envelopes containing the bid prices for those accepted proposals are then opened and an award is made to the lowest responsive and responsible bidder.

Directions to Agencies considering use of competitive sealed bidding for procurements of technology goods and services:

(Note: Agencies with delegated authority of \$50,000 or less should send these procurements directly to VITA by completing the procurement requisition form available on VITA’s website at <http://www.vita.va.gov>).

- 1. Review the statewide technology contracts available on VITA’s website (<http://www.vita.va.gov>) to determine that there is no statewide technology contract available for the particular technology good or service to be procured. Statewide contracts can offer significant price discounts over individual procurements.**
- 2. Any technology procurement (even if it is within your agency’s delegated authority) can be done by VITA for your agency. Complete the online requisition form available on VITA’s website if you would prefer that VITA conduct any particular technology procurement.**

In preparing the IFB document:

- 1. Use the online IFB template forms and instructions available on eVA or VITA’s website or your own form.**
- 2. Written IFB solicitation document should contain the specifications and contractual terms and conditions including any requisite qualifications of potential contractors.**
- 3. Include all mandatory terms and conditions.**

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Posting of the IFB:

IFBs must be posted for a minimum of 10 calendar days prior to the due date for receipt of proposals.

Notice will be posted on eVA and VITA's website.

Evaluation of proposals received: Evaluation of bids will be based upon the specific requirements set out in the IFB solicitation document. An award is made to the lowest responsive and responsible bidder who meets the specific requirements listed in the IFB. §2.2-4318 of the *Code of Virginia* expressly addresses the one situation where negotiation with the lowest responsible bidder may occur.

§ 2.2-4318. Negotiation with lowest responsible bidder.

Unless canceled or rejected, a responsive bid from the lowest responsible bidder shall be accepted as submitted, except that if the bid from the lowest responsible bidder exceeds available funds, the public body may negotiate with the apparent low bidder to obtain a contract price within available funds. However, the negotiation may be undertaken only under conditions and procedures described in writing and approved by the public body prior to issuance of the Invitation to Bid and summarized therein.

Contract Award: Post the notice of award for 10 calendar days via eVA and VITA's website.

C. The Reverse Auctioning Procedure for Technology Procurements

- **“Best Value” Reverse Auctions**

“Best Value” Reverse Auctions, when properly utilized, will result in VITA being able to procure a better overall technology value for the Commonwealth. In addition, the Commonwealth will realize technology cost savings through “real time” competition. A properly conducted “Best Value” reverse auction will offer VITA’s potential industry partners an efficient forum with which additional market share and access to new markets may be facilitated.

For best value technology procurements placing importance on factors other than price, such as Total Cost of Ownership (TCO), VITA may establish source selection criteria

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in advance of the reverse auction with potential industry partners. By doing so, VITA can be assured of receiving and being able to efficiently evaluate the bids received to determine which bid represents the “best value” for the Commonwealth. In utilizing “best value” reverse auctions, VITA establishes the following ground rules:

- “Best value” source selection and evaluation criteria are established with input from potential industry partners in advance of the auction.
- Source selection criteria are made available to all potential industry partners prior to the auction.
- Potential industry partners will provide standardized offerings electronically in advance of the reverse auction for all factors other than price.
- VITA will evaluate factors other than price prior to the reverse auction.
- Reverse auction is conducted to determine price.
- VITA performs integrated evaluation of both price and factors other than price to quantify the “Best Value” for the Commonwealth.
- VITA awards contract.

- **“Lowest Price” Reverse Auctions**

A “Lowest Price” reverse auction may be utilized by VITA to achieve procurement savings for general technology commodities, where there is little product and industry partner differentiation and where product price is the only criterion. “Lowest Price” reverse auctions would not be appropriate for purchase of technology for which acquisition costs are typically less than half of the life cycle costs. “Lowest Price” reverse auctions should be utilized when:

- There is little concern about production specifications or the performance history of the industry partners involved with the auction.
- Comparable bids are expected to be tendered.
- A clear and complete Invitation to Qualify (IFQ) is available.

- **Form**

Bidders will be invited (through eVA e-mail notification and other push-out technology) to bid on specified goods or nonprofessional services through real-time electronic bidding. VITA may, in some instances, conduct an “invitation to qualify” (IFQ) which is a solicitation process similar to a request for bid or request for proposal, through which potential industry partners are pre-qualified to participate in a reverse auction. Only industry partners that meet the requirements of the IFQ and agree to the terms and conditions contained therein are invited to participate in that particular reverse auction. Some terms and conditions may be negotiated before the invitations to participate are issued to potential industry partners. In other instances, where the reverse auction is to be conducted for the purchase of a particular commodity, the

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reverse auction may be held, after appropriate notice, including those industry partners who are willing to participate.

- **Notice**

Bidders will be given 10 calendar days notice of reverse auctioning opportunities through eVA and the VITA website. Potential bidders will receive detailed specifications and requirements, along with the terms and conditions relevant to the technology goods or service being auctioned. If an RFI is utilized, VITA will notify responding potential industry partners as to whether they are prequalified to participate in the reverse auction. Names of or those industry partners that have been invited to or prequalified for the reverse auction will not be disclosed until after the reverse auction has occurred. .

- **Terms and Conditions**

Terms and Conditions will be defined up front with reverse auctioning opportunities. If there is needed negotiation on a particular term and condition, such negotiation will include all potential industry partners and will be finalized before the reverse auctioning opportunity solicitation is finalized. Industry partners must agree to the reverse auction solicitation's finalized terms and conditions before they will be eligible to participate in the reverse auction. As with all of its technology procurements, VITA will standardize the terms and conditions to the commodity code that is being purchased through the reverse auction and will limit the mandatory terms and conditions as much as practicable to those mandated by the VPPA or VITA, the technology product or service being procured or the requirements of the business owner.

- **Duration**

The reverse auction will run for a set duration and may be extended based on a low price entered in the last minute of the auction. A minimum price reduction will be required to extend the auction. VITA may, when appropriate, utilize a "minimum bid step" wherein each successive bid must differ from the previous bid by an amount known as a minimum bid step. (For example, a further reduction of a certain % amount or greater in price is required to extend the auction period.) The minimum bid step amount will be determined by VITA in advance of the auction and may be different depending on what is being auctioned. In most cases, the minimum bid step will be an amount less than ("bid decrement") the previous bid. The minimum bid step will be included in the posted reverse auction solicitation. However, in some cases, such as when bids are given as a percent off manufacturer's list price, the minimum bid step will be an amount greater than ("bid increment") the previous bid (i.e. 15% off is a better price than 10% off).

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VITA may also utilize an “extension activation period” during its reverse auction procurements. The “extension activation period” (EAP) is defined as the number of minutes before the end of an auction, during which, if a bid is received, VITA may choose to extend the auction by a pre-defined number of additional minutes (“the extension”). For example, if the auction parameters are: EAP = 3 minutes, Extension = 5 minutes..... then, if a bid is placed within the last 3 minutes of an auction, the auction would be extended for an additional number of minutes. This would continue until no more bids were received.

- **Award**

Award will be made to the lowest responsive and responsible bidder immediately after the auction is completed. The award will be posted on eVA and the VITA website for a minimum of ten (10) calendar days.

- **No Public Opening**

There is no mandatory public opening of the RFI responses if an RFI is held prior to the reverse auctioning event. There is also no mandatory public viewing of the reverse auction event. However, RFI responses and reverse auction logs are considered public record. Upon request, they will be made available to the public after an award has been made.

- **Clarifications, Negotiations and Acceptance in reverse auctions**

Clarifications, negotiations, and acceptance of all specifications, requirements, terms and conditions, etc. will occur before VITA invites an industry partner to participate in a reverse auction event. After the auction, VITA will permit changes only with the limitation that the change(s) do not alter the scope or content of the original reverse auction solicitation to a degree that will affect the justification that was used to eliminate other industry partners from being included in the reverse auction. No changes to the specifications or terms and conditions will be allowed after bidding if those changes in a submitted bid would have rendered the bid unresponsive.

- **Anonymous bidding during the reverse auction event**

During the auction, the on-line view of the bids presented to the bidders will not have names, aliases, or identifiers of any kind as to who has placed a particular bid.

Instruction to Agencies: VITA is working with the Department of General Services to formalize the reverse auctioning process through eVA. As soon as the process is available and ready for use, VITA will notify its customer agencies and update this Guide to include the reverse auction process.

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D. The Sole Source Technology Procurement Process

- **Justification/Documentation**

The VPPA authorizes public bodies to conduct a sole source procurement when there is only one source practicably available for the goods or services required and competition is not available. Sole source contracts may be negotiated and awarded without competitive negotiation or competitive sealed bidding, however, there must be a determination in writing which documents that only one source was determined to be practicably available and identifying that which is being procured, the contractor selected, and the date on which the contract was or will be awarded. A written determination from the agency head or his/her designee documenting that there is only one source practicably available is required to be included in the procurement file. (*See § 2.2-4303 of Title 2.2 of the Code of Virginia.*)

- **Process for Sole Source Technology Procurements Less Than \$100,000 (as calculated over the entire lifecycle of the procurement or the project)**

Unless requested by a state agency, VITA will not be involved in the review or approval of technology sole source procurements less than \$100,000 (as calculated over the entire lifecycle of the procurement or project). Effective July 1, 2003, authority to review and recommend sole source procurements for any agency is vested with the Agency Information Technology Resource (AITR). Approval of the AITR's recommendation to proceed with a sole source procurement is required by the agency head and is not delegable. (Note: §2.2-2009(B), *Acts of Assembly, Chapter 981* (House Bill 1926) provides that the head of each state agency shall designate an existing employee to be the agency's information technology resource who shall be responsible for compliance with the procedures, policies, and guidelines established by the CIO.)

Effective July 1, 2003, VITA has established criteria for review and approval by state agencies of sole source technology procurements of less than \$100,000. (See "Sole Source Technology Procurement Criteria Checklist" below.) An AITR should make an initial review and determination of whether the sole source procurement request meets VITA's criteria as specified on the Checklist. If so, the agency head is required to review the AITR's recommendation and sign off his/her approval on the Checklist. Upon approval by the agency head, the sole source procurement may proceed. An electronic version or photocopy of the signed Checklist is required to be submitted to VITA within 10 business days of approval. Sole source procurements are subject to audit by VITA at any time at VITA's discretion. Should an audit reveal that an agency has abused its discretion or violated the VPPA or Code of Virginia in purchasing technology pursuant to its delegated authority; such delegation may be rescinded or reduced at any time. Criteria Checklist is subject to revision by VITA at any time. To correctly determine the total cost of procurement or a project, agencies and institutions should not divide requirements, orders, or amounts of technology purchases

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to keep them under designated threshold amounts. In determining the amount of any technology procurement, life-cycle costs, which include the expenses to support and maintain a system or piece of equipment over its expected lifespan should be included over and above the initial cost of the procurement.

- **Process for Sole Source Technology Procurements Equaling or Exceeding \$100,000 (as determined over the entire lifecycle of the procurement or project)**

If an agency's sole source procurement request equals or exceeds \$100,000, the CIO must approve the procurement as a sole source procurement prior to the commencement of the actual procurement.

- **Process for Sole Source Technology Procurements of Major Information Technology Projects**

If an agency's sole source procurement request involves a major information technology project, the Technology Investment Board must approve the procurement as a sole source procurement prior to the commencement of the actual procurement. Major information technology project means any state agency information technology project that (i) is mission-critical, (ii) has statewide application, or (iii) has a total estimated cost of more than \$1 million. (See § 2.2-2001 of Title 2.2 of the *Code of Virginia*.)

- **Notice**

Pursuant to §2.2-4303(E) of the *Code of Virginia*, all sole source procurements must be posted on eVA or in a newspaper of general circulation on the day the decision to award is announced or the award is made, whichever occurs first. All sole source procurements will also be posted on the VITA website. Notice of a sole source procurement should include what is being procured, the contractor selected, and the date of the contract award.

- **VITA's Review of Sole Source Technology Procurement Authority (for executive branch agencies designated as in-scope for IT consolidation into VITA)**

If your agency has been designated as an in-scope agency for IT consolidation into VITA, sole source technology procurement authority will be reviewed at the time your agency IT is consolidated into VITA. As part of the process of negotiating a Memorandum of Agreement between your agency and VITA, it is anticipated that your agency will retain sole source technology procurement authority for application software (no hardware, servers, computers, etc.)

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Sole Source Technology Procurement Criteria Checklist Virginia Information Technologies Agency (current 7/1/03)

All requests for sole source technology procurements must meet the criteria established in § 2.2-4303 of Title 2.2 of the *Code of Virginia* as specified on this Checklist.

PART I TO BE COMPLETED BY AGENCY INFORMATION TECHNOLOGY RESOURCE (AITR)

INSTRUCTIONS: The AITR should complete basic information about the sole source procurement request and make an initial review and determination of whether the request meets the criteria specified on this Checklist.

Agency Name _____

Agency Code _____

Description of the Technology Product or Service Sought _____

Commodity Code _____

Total Cost of the Technology Product or Service Sought as Calculated Over the Entire Lifecycle of the Procurement or the Project \$ _____

Vendor/Supplier _____

1. The technology product or service sought cannot be procured from an existing statewide contract.

Yes No

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2. The total cost of the technology product or service sought, as calculated over the entire lifecycle of the procurement or the project, is less than \$100,000.

Yes No

☐ ☐

3. The technology product or service sought is the only one that can meet the needs of the agency.

Yes No

☐ ☐

4. The listed vendor/supplier is the only practicably available source from which to obtain the technology product or service sought.

Yes No

☐ ☐

5. The agency has surveyed other vendors/suppliers from which to obtain the technology product or service sought and found the following prices:

Name of Vendor/Supplier	Price for Technology Product or Service Sought

6. The agency has fully documented the results of its price-reasonableness survey in its procurement file.

Yes No

☐ ☐

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7. Based on its price-reasonableness survey, the agency has determined that the price of the technology product or service sought is considered reasonable.

Yes No

☐ ☐

8. The agency made efforts to conduct a noncompetitive negotiation for the technology product or service sought and has fully documented the results of its efforts in its procurement file.

Yes No

☐ ☐

To the best of my knowledge, information, and belief, the technology product or service sought by the agency meets all the criteria for sole source procurements established in § 2.2-4303 of Title 2.2 of the *Code of Virginia* as specified on this Checklist. I recommend that the request proceed as a sole source procurement upon approval of my agency head.

Print Name of AITR _____

AITR Signature _____

Date _____

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PART II TO BE COMPLETED BY THE AGENCY HEAD

INSTRUCTIONS: Before a sole source procurement can proceed, the agency head is required to review the AITR's recommendation and sign off his/her approval on this Checklist. Approval by the agency head is not delegable.

I concur with the recommendation in Part I above that the technology product or service sought by my agency meets all the criteria for sole source procurements established in § 2.2-4303 of Title 2.2 of the *Code of Virginia* as specified on this Checklist. I direct that the request proceed as a sole source procurement. I understand that my approval and agency records related thereto are subject to audit by the Virginia Information Technologies Agency at any time for any reason.

Print Name of Agency Head _____

Agency Head Signature _____

Date _____

**Please submit an electronic version or a photocopy of the signed Checklist to the Virginia Information Technologies Agency within 10 business days of approval.
Thank you!**

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E. The Emergency Procurement Process

- **Justification**

In case of an emergency, a contract may be awarded without competitive sealed bidding or competitive negotiation; however such procurement shall be made with such competition as is practicable under the circumstances.

- **Documentation**

Written documentation contained in the procurement file shall document the basis for the emergency and the steps taken to insure as much competition as practicable. In addition, written documentation shall state the basis for selection of a particular industry partner in awarding the contract. An emergency is generally considered to be an occurrence of a serious or urgent nature that demands immediate action to protect persons or property.

- **Notice**

VITA will issue a written notice via eVA and the VITA website as required by §2.2-4303 (F) of the *Code of Virginia* as well as publication in a local newspaper or designated public area stating that the contract is being awarded on an emergency basis and identifying what is being procured, the contractor selected, and the date on which the contract was or will be awarded.

Agency Instructions for Emergency Procurements over \$50,000:

After determination that emergency exists, agency may make technology procurement or VITA may make technology procurement on agency's behalf. Agency should e-mail requisition form located on VITA's website at <http://www.vita.va.gov> to VITA.

Technology goods and services may be procured without competitive negotiation or competitive sealed bidding as long as steps are taken to insure as much competition as practicable.

1. Agency or VITA must document the basis for the emergency and steps taken to insure competition for procurement file.
2. Notice of contract award shall be posted via eVA and VITA's website. Notice should include what is being procured, the contractor selected and the date on which the contract was awarded.

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F. The Small Purchase Process:

- **Dollar Thresholds**

VITA will establish dollar threshold limits which will dictate whether a single quotation or up to four price quotations is necessary for certain low dollar purchases which are not covered by a statewide contract to guarantee competition whenever practicable and to determine price reasonableness.. Before performing a small dollar technology purchase, all VITA customer agencies should review the statewide contracts available on VITA's website at <http://www.vita.va.gov>. to determine if the technology product or service needed can be purchased through statewide contract. At any time, an agency may request that a small dollar technology purchase be handled on its behalf by VITA by completing the requisition form on VITA's website and e-mailing the form to VITA.

Until such time as VITA is able to establish small purchase dollar threshold limits, VITA's customer agencies should utilize the small purchase dollar threshold requirements issued through the Department of General Services' Division of Purchases and Supply as follows:

- **For purchases less than \$5,000 – 1 quote**
- **For purchases between \$5,000 and \$15,000 – 3 quotes**
- **For purchases between \$15,000 and \$30,000 – 4 or more quotes.**

In most instances, the required number of quotes may be obtained by utilizing eVA's Quick-Quote functionality, eVA e-mail capabilities, or if necessary, through telephone solicitations. For certain commodity codes, VITA may require, at some point in the future, that even purchases from \$0 to \$30,000 be channeled through VITA for procurement. As much as practicable and through posting through the Virginia Business Opportunities, VITA will include enterprises selected from the list of certified minority businesses maintained on the Department of Minority Business Enterprise (DMBE)'s website and through eVA in its small purchase solicitations.

- **eVA Functionality for Small Purchases**

VITA will utilize eVA functionality for e-Mall, quick-quote and catalog purchasing to meet the number of quotations ultimately required for each dollar threshold limit. As required by §2.2-4303(G) of the Code of Virginia, purchases that are expected to exceed \$30,000 shall require the written informal solicitation of a minimum of four bidders or offerors. VITA may also utilize eVA's e-Mall, quick-quote, catalog purchasing functionality as well as DMBE's website for solicitations and to adhere to the unsealed or informal bid procedure where the transaction is between the dollar limit set for requiring three solicitations and the dollar limit (\$50,000) for formal competitive sealed bidding or competitive negotiation.

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G. Informal IFB procedure for technology purchases from \$30,001 to \$50,000

- **Form**

A written unsealed IFB is prepared describing the brief scope of work, specifications and requirements, terms and conditions either stated or incorporated by reference and a pricing schedule.

- **Notice**

Pursuant to [§2.2-4303 \(G\)](#) of the *Code of Virginia*, at least four sources will be solicited and expanded, as needed and as far as practicable, to include minority, small and women-owned businesses. This solicitation can be accomplished through eVA utilizing quick quote functionality. All informal IFBs will be posted via eVA and the VITA website. Although the bid must be publicly posted, it does not have to be posted for a minimum of 10 days. The notice may be posted for the amount of days deemed appropriate by VITA to receive responses.

- **Terms and Conditions**

VITA will include standardized terms and conditions in the informal IFB solicitation document which are standardized per the commodity code or solution being procured. Mandatory terms and conditions will be limited to those terms and conditions expressly required by the VPPA, the Code of Virginia, federal law, VITA, the technology product or service being procured or the business owner. All industry partners will be familiar with or have access to VITA's standardized terms and conditions and the commodity codes to which they apply through VITA's website.

- **Receipt of Informal Bids**

Bids may be tabulated and opened as they are received using eVA's on-line tabulation and posting capabilities.

- **Evaluation**

Evaluation of informal IFB bids will be based on the requirements set forth in the IFB, which may include special qualifications of potential contractors, life-cycle costing, value analysis, and any other criteria such as inspection, testing, quality, workmanship, delivery and suitability for a particular purpose, which are helpful in determining accountability. If the lowest bid price exceeds available funds, negotiations may be held with the lowest responsive and responsible bidder to obtain a contract price within available funds provided the provision was described and included in the solicitation.

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- **Bid Award**

The award will be made to the lowest responsive and responsible bidder. When the terms and conditions of multiple awards are so provided in the informal IFB solicitation document, awards may be made to more than one bidder. Award notices will be posted for an amount of days deemed necessary by the VITA procurement professional via eVA and the VITA website immediately following the actual time of award as proscribed in [§2.2-4360](#) of the *Code of Virginia* and as proscribed in the terms and conditions contained in the Invitation to Bid.

Instructions to Agencies on Informal IFBs:

1. If your agency would prefer that VITA perform the procurement on your agency's behalf complete the requisition form located on VITA's website at <http://www.vita.va.gov> and e-mail the form to VITA.
2. Before preparing the written informal IFB, check VITA's available statewide contracts on the VITA website to be sure that the needed technology good or service cannot be procured from an existing contract.
3. Prepare the written unsealed IFB utilizing template forms available on VITA's website or through eVA or your own form. The IFB should include a description of the scope of work, specifications and requirements, terms and conditions and a pricing schedule.
4. Post the informal IFB on eVA's website and the VITA website.
5. Solicit four sources through eVA or other sources, as needed.
6. Bids will be tabulated and opened using eVA's on-line tabulation and posting capabilities.
7. Award will be made to the lowest responsive and responsible bidder.

Award notices may be posted for the amount of days determined necessary by the procurement professional on eVA. Award notices should also be posted on VITA's website and as proscribed in the IFB.

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H. Informal RFP for technology purchases exceeding \$30,000 and less than \$50,000:

- **When used**

The Informal RFP process should be used when there is a business problem to be solved and a proposed solution with an estimated cost between \$30,001 and \$50,000 is desired from an industry partner. As much as practicable and through posting through the VBO, VITA will include, when available, enterprises selected from the list of certified minority businesses maintained on DMBE's web site and through eVA in its solicitations. With an informal RFP, there is no description of the solution required or a statement of work, only a statement of the problem or agency business need, the qualifications (if any) being sought from the industry partner and the basis upon which prospective industry partners will be evaluated.

- **Form**

A written RFP/solicitation document is developed that states the business problem as well as any unique capabilities or qualifications required of the industry partner proposing the solution. As most VITA RFP's will be solution-oriented and awarded on a best value determination, the procurement professional or evaluation team will determine, in their opinion, the best value solution for the Commonwealth being proposed and award the contract accordingly. "Best value," as predetermined in the solicitation, means the overall combination of quality, price, and various elements of required services that in total are optimal relative to a public body's needs.

The mandatory and desirable terms and conditions (including any special "business" terms and conditions) will be included in the RFP. [§2.2-4303 \(G\)](#) of the *Code of Virginia* requires that if the value of a procurement is over \$30,000 and an informal RFP is used, it must be in writing and a minimum of four bidders or offerors must be solicited. (eVA on-line informal RFP procedure is sufficient to meet "in writing" requirement.)

- **Notice**

Public notice of the informal RFP solicitation is given via eVA and VITA's website for the amount of days deemed necessary by the procurement professional prior to the date set for receipt of the proposals as required by [§2.2-4360](#) of the *Code of Virginia* and in the manner prescribed in the terms and conditions of the RFP solicitation document.

- **Terms and Conditions**

VITA will include standardized terms and conditions, if available, in the informal RFP solicitation document which has been standardized per the commodity code/solution being purchased. Mandatory terms and conditions will be limited to those terms and

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conditions expressly required by the VPPA, the Code of Virginia, federal law, VITA or the technology good or service being procured or those required by the business owner. All industry partners will be familiar with or have access to VITA's standardized terms and conditions via VITA's website, thus reducing the need for prolonged negotiations in the informal RFP process.

- **Evaluation**

Proposals are evaluated, based on the evaluation criteria specified in the RFP, including price if requested, to determine the top two or more offerors that are deemed, in the Commonwealth's opinion, to propose the best overall "best value" technology solution and to be fully qualified and best suited among all proposals submitted.

- **Negotiation**

Negotiations are held with each of the industry partners selected with the best value solution being selected for award. If only one offeror is qualified or only one offeror is clearly more highly qualified than others under consideration, then a contract may be negotiated and awarded to that offeror.

- **Award**

Multiple awards may be made when terms and conditions of multiple awards were provided for in the informal RFP solicitation. Notice of Award will be posted for the amount of days deemed necessary by the procurement professional via eVA and VITA's website.

Instructions to Agencies on Informal RFPs:

1. If your agency would prefer that VITA perform the procurement on your agency's behalf complete the requisition form located on VITA's website at <http://www.vita.va.gov> and e-mail the form to VITA.
2. Before preparing the written informal RFP, check VITA's available statewide contracts on the VITA website to be sure that the needed technology good or service cannot be procured from an existing statewide contract.
3. Prepare the written unsealed RFP utilizing template forms available on VITA's website or through eVA or your own form. The RFP should include a statement of the business or technology problem to be solved as well as any unique capabilities or specifications required. Mandatory and desirable terms and conditions are also included in the informal RFP document.

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4. Post the informal RFP solicitation on eVA and VITA's website for an amount of days deemed appropriate to the procurement professional prior to the date set for receipt of proposals.

5. Proposals are evaluated based on the factors specified in the RFP to determine which proposals offer the "best value" solution to the Commonwealth.

6. Negotiations are held with each "best value" qualified proposer and the proposer with the best value solution in the Commonwealth's opinion is selected for award.

7. Notice of award must be posted for 10 calendar days on eVA.

I. Cooperative Procurement Arrangements

[§2.2-4304](#) of the *Code of Virginia* was amended in the 2003 General Assembly session to provide as follows:

§ [2.2-4304](#). *Cooperative procurement.*

A. Any public body may participate in, sponsor, conduct, or administer a cooperative procurement agreement on behalf of or in conjunction with one or more other public bodies, or public agencies or institutions or localities of the several states, territories of the United States, or the District of Columbia, for the purpose of combining requirements to increase efficiency or reduce administrative expenses in any acquisition of goods and services. Except for contracts for professional services, a public body may purchase from another public body's contract even if it did not participate in the request for proposal or invitation to bid, if the request for proposal or invitation to bid specified that the procurement was being conducted on behalf of other public bodies. Any public body that enters into a cooperative procurement agreement with a county, city, or town whose governing body has adopted alternative policies and procedures pursuant to subdivisions 9 and 10 of § [2.2-4343](#) shall comply with the alternative policies and procedures adopted by the governing body of such county, city, or town.

B. Subject to the provisions of §§ [2.2-1110](#), [2.2-1111](#), [2.2-1120](#) and [2.2-2007](#), any authority, department, agency, or institution of the Commonwealth may participate in, sponsor, conduct, or administer a

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cooperative procurement arrangement on behalf of or in conjunction with public bodies, private health or educational institutions or with public agencies or institutions of the several states, territories of the United States, or the District of Columbia, for the purpose of combining requirements to effect cost savings or reduce administrative expense in any acquisition of goods and services, other than professional services. A public body may purchase from any authority, department, agency or institution of the Commonwealth's contract even if it did not participate in the request for proposal or invitation to bid, if the request for proposal or invitation to bid specified that the procurement was being conducted on behalf of other public bodies. In such instances, deviation from the procurement procedures set forth in this chapter and the administrative policies and procedures established to implement this chapter shall be permitted, if approved by the Director of the Division of Purchases and Supply. Pursuant to [§2.2-2007](#), such approval is not required if the procurement arrangement is for telecommunications and information technology goods and services of every description. In instances where the procurement arrangement is for telecommunications and information technology goods and services, such arrangement shall be permitted if approved by the Chief Information Officer. However, such acquisitions shall be procured competitively. Nothing herein shall prohibit the payment by direct or indirect means of any administrative fee that will allow for participation in any such arrangement.

VITA may enter into cooperative procurement arrangements for the purchase of information technology when practicable and when in the best interests of the Commonwealth. All such cooperative procurement arrangements shall be under the direction of and approved by the Chief Information Officer. Any purchases made under a cooperative procurement arrangement shall be made in accordance with the VPPA and this policy document, unless otherwise approved by the Chief Information Officer.

J. Public-Private Education Facilities and Infrastructure Act of 2002

In 2002, the Virginia General Assembly passed the Public-Private Education Facilities and Infrastructure Act (PPEA) which was modeled upon Virginia's Public-Private Transportation Act. The PPEA was designed to encourage (i) public-private partnerships in providing public infrastructure by state and local governments and (ii) both flexibility and creativity as it relates to the financing, construction and procurement of such projects.

Through the PPEA, a public entity may contract with a private operator for the operator to develop a "qualifying project." In 2003, the General Assembly expanded the definition of a "qualifying project" to include "major information technology projects defined as technology infrastructure including but not limited to telecommunications,

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automated data processing, word processing and management information systems, and related information, equipment, goods and services.” (See House Bill 1925 (2003).) Under the PPEA, a public entity may submit a proposal to VITA or any other public body through an RFP or informal process. If an unsolicited or informal proposal is received, the public body shall charge a fee to review the proposal. The Virginia Public Procurement Act does not apply to procurements under the PPEA, but the PPEA does make a strong preference for competitive sealed bidding. After compliance with the provisions of the Act and procedures adopted by the public entity, the private entity and the public entity may ultimately enter into a comprehensive agreement setting forth the terms, conditions, rights and responsibilities between the parties.

In order to utilize the PPEA as an alternative method of procurement, VITA will develop procedures for submission and evaluation of solicited and unsolicited proposals as required under the PPEA. These procedures will include provisions for the posting and publication of a public notice of a private entity’s request for approval of a qualifying project and a reasonable time period of no less than 45 days, during which competing proposals will be received by the public entity.

[Need to address PPEA guidelines here].

K. Public-Private Partnerships developed by the CIO

[§2.2-2002 \(B\)](#) of the *Code of Virginia* provides that the CIO may enter into public-private partnership contracts to finance or implement information technology programs and projects as follows:

B. Consistent with [§ 2.2-2007](#), the CIO may enter into public-private partnership contracts to finance or implement information technology programs and projects. The CIO may issue a request for information to seek out potential private partners interested in providing programs or projects pursuant to an agreement under this subsection. The compensation for such services shall be computed with reference to and paid from the increased revenue attributable to the successful implementation of the program or project for the period specified in the contract. The CIO shall be responsible for reviewing and approving the programs and projects and the terms of contracts for same under this subsection. The CIO shall determine annually the total amount of increased revenue attributable to the successful implementation of a program or project under this subsection and such amount shall be deposited in the Virginia Technology Infrastructure Fund created in [§ 2.2-2018](#). The CIO is authorized to use moneys deposited in the Fund to pay private partners pursuant to the terms of contracts under this subsection.

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All moneys in excess of that required to be paid to private partners, as determined by the CIO, shall be reported to the Comptroller and retained in the Fund. The CIO shall prepare an annual report to the Governor and General Assembly on all contracts under this subsection, describing each information technology program or project, its progress, revenue impact, and such other information as may be relevant

The Chief Information Officer is not currently accepting any unsolicited proposals for public-private partnership contracts under §2.2-2002 (B) of the Code of Virginia.

L. Unsolicited Proposals

VITA's industry partners are encouraged to submit unsolicited proposals offering new and innovative technology goods, services and solutions including those which would provide significant cost savings to the Commonwealth. Unsolicited proposals are defined as proposals received which are not in response to any Commonwealth initiated solicitation or program. However, all unsolicited proposals are submitted with the following proviso(s):

- All unsolicited proposals are submitted at the risk of and expense of the offeror.
- An unsolicited proposal is submitted with no obligation on the part of the VITA or the Commonwealth.
- Unsolicited proposals must contain no restrictions on the Commonwealth's or VITA's use of any ideas, proposals or the information contained in such proposals.
- VITA may charge a fee for review of an unsolicited proposal.
- Minimum fee of \$1,000 (or greater) may be charged for review of unsolicited proposals under a specified amount (\$50,000 and an increased fee schedule over that amount.) Proposals requiring technical review would be billed on an hourly basis as appropriate for time spent in review.
- All unsolicited proposals will be evaluated for their participation of SWAM-D businesses.

Unsolicited proposals shall be submitted in writing directly to VITA's Office of Acquisition Services or in the event the proposal is for the purchase of goods and services over \$100,000, directly to VITA's Division of Project Management. Favorable evaluation by VITA or the Commonwealth of an unsolicited proposal does not in itself justify a procurement or awarding a contract without VITA first putting out the proposal for competition and providing for competitive negotiation or competitive sealed bidding, as required. This policy for unsolicited proposals applies only to goods and non-professional services, and not to construction or professional services.

VITA will not be accepting unsolicited proposals until further notice.

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M. Technology Refresh Procedure

In the procurement of future information technology and telecommunications contracts, VITA may utilize a “technology refresh” procedure within the parameters of the Virginia Public Procurement Act (VPPA). This technology refresh procedure could be used two ways: First, a technology refresh procedure could be utilized as part of the procurement process which would allow and encourage industry partners to modify submitted responses to bids/proposals to reflect technology changes or innovations which may have occurred between the time of the bid/response and the time of contract award. This technology refresh procedure would enable the Commonwealth to procure the latest technology and telecommunications solutions within an existing procurement framework and without having to cancel and issue a new procurement.

Second, VITA may want to utilize a technology refresh procedure, much like that used for GSA Schedule 70 technology contracts, which enables industry partners to refresh existing contracts with updated technology without a new procurement process. GSA Contractors may add and delete products and services from their contracts as their commercial product lines evolve. This provision allows Contractors to continually refresh technology offered through the Schedules Program. To further enhance the ability of Contractors to offer the latest technology, the Federal Supply Service piloted a new approach for items in contracts for Scientific Equipment. A "New Technology" category was added when soliciting proposals from the vendor community. This encouraged the technology industry to offer and promote new and improved products to the Government. Some VITA contracts may contain a term and condition which allows for a technology refresh procedure which would allow an industry partner to continually refresh the technology offered through an existing contract.

Several advantages of such a technology refresh procedure have been identified. They include:

- Industry Partners may add and delete products and services to existing contracts with VITA as their commercial products and the technology industry evolve.
- Industry Partners may continually refresh technology and offer the latest technology solutions.
- VITA can access new technology without going through time-consuming additional procurements.

N. Computer Product Challenge Process

VITA is may utilize, when appropriate, a Computer Product Contract Challenge Process to reduce costs, maximize competition, and create additional procurement opportunities for its Industry Partners. When VITA intends for the challenge process to be available for challenging an existing contract for certain technology or telecommunications goods

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or services, such challenge procedure will be specifically provided for in the terms and conditions of the solicitation document and the awarded contract.

In the future, VITA may utilize the following challenge process or some variation thereof for the purchase of technology goods or services:

- The solicitation document would contain terms and conditions which provide for the format and procedure of the technology contract challenge for a particular procurement or contract.
- The challenging industry partner must submit pricing that is lower than that indicated for every item or every service provided for in the current awarded contract. The Commonwealth may then determine if, in its opinion, such a challenge would provide a benefit to the Commonwealth. All items or services on a particular contract must be included in the challenge or the challenge will not be considered, unless otherwise stipulated.
- If a challenging industry partner submits a computer product challenge that is identical (same make & model, etc.) to the current contract product (the standard), the challenger's price will not be disclosed to the current contract partner prior to award of the new contract. If the challenger is submitting a computer product that is considered "equal" to the current standard, but is not identical, the current contract partner will be allowed to see the challenger's price and have an opportunity to meet or beat that price.
- **Example:** If a particular PC make and model, is currently the standard for personal computers purchased by the state, the industry partner for this model will hold this contract for 3 months (indicated as the "open contract date" on a contract). If after [6, or 12 or some previously agreed-upon time] months another industry partner has a personal computer that is technologically equal to the same make and model, then the industry partner is free to send the computer specifications to VITA's Office of Acquisition Services for review. If it is determined that the product meets or exceeds the one currently on contract, the challenging industry partner will be asked to submit the personal computer for evaluation. After a successful evaluation, the industry partner will be asked to provide a price. The current contract holder will then be given an opportunity to meet or beat the price of the challenging industry partner. In the event the current contract holder does not meet or beat the challenger's price, the new industry partner will be asked to sign a [6 or 12 month] contract. After the [6 or 12-month] contract, industry partners are again free to challenge the contract.
- For those products where an identical product is being offered, the competing industry partner may provide its pricing directly to the Acquisitions Services Division (pricing that is provided must be lower than existing contract by a certain agreed-upon percentage.) This reduced price may be offered during the "open contract date" on the existing contract. The current contract holder will be notified that its prices on a particular contract or products covered by a particular contract have been challenged, and a new price(s) will be requested. If this occurs,

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the challenging industry partner's prices will not be revealed to the current contract holder. If the price provided by the current contract holder is equal to or less than that offered by the competing industry partner, the current contract holder will be granted an additional 6 or 12-month exclusive contract. In the event that the current contract holder does not meet or beat the competitor's price the competitor will be asked to sign a [6 or 12 month] contract.

- Challenging industry partners must accept the terms and conditions of the current contract in their entirety in order to submit a challenge.
- The computer product being provided by the industry partner holding the current contract will be considered the standard. VITA's industry partners may obtain copies of current VITA contracts through VITA's website or through eVA.

Several advantages of such a Computer Product Contract Challenge Process have been identified for VITA and its industry partners. They include:

- Allows VITA to have the lowest price available for technology products and services without a new procurement.
- Allows new and existing industry partners to challenge existing contracts based on price and to compete with contract partners at any time without having to wait for a new procurement opportunity.

III. Evaluating Offers/ Factors in Industry Partner Selection

A. Small, Women-Owned, or Minority-owned Businesses (SWAM)

VITA is committed to ensuring fair consideration of all suppliers in its day-to-day procurement of information technology goods and services and telecommunications goods and services. The Commonwealth has seen that working with a wide range of suppliers provides a competitive edge in producing high quality, low-cost innovative products and services. All VITA employees with purchasing responsibility or who are involved in procurement decisions for goods and services are expected to notify and give every consideration to using qualified, small, and women-owned and minority (SWAM) industry partners in a manner that is consistent with state and federal laws and regulations. VITA will also encourage that all bidders and offerors be encouraged to utilize small, women-owned and minority industry partners in their subcontracting plans. In addition, VITA will not discriminate in the solicitation or awarding of contracts in violation of [§2.2-4310](#) of the *Code of Virginia*.

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VITA will partner with the Department of Minority Business Enterprise, the Governor's Advisory Commission on Minority Business and the Department of Business Assistance to develop ways to increase technology procurement opportunities and participation for small, women-owned and minority-owned businesses.

B. Preference for Virginia Products and Virginia Industry Partners in cases of tie bids

In the case of a tie bid, preference is given to goods and services produced in Virginia or provided by Virginia vendors, if such choice is available. Copies of tie bids resulting from competitive sealed bidding will be forwarded to the Antitrust Section of the Office of the Attorney General. Whenever any industry partner is a resident of any other State and such State under its laws allows a resident industry partner of that state a preference, a like preference may be allowed to the lowest responsible bidder which is a resident of Virginia. In the case of a tie bid in instances where goods are being offered, and existing price preference have already been taken into account, preference shall be given to the industry partner whose goods contain the greatest amount of recycled content.

C. Delivery Costs/Freight

Freight and delivery charges shall be included in the pricing schedule proposed in all bids and proposals. When necessary, freight and delivery charges are used in the evaluation and award and should be clearly reflected on all documentation in the procurement file. By signing an IFB, industry partners certify that the bid prices offered for FOB destination include only the actual freight rate costs at the lowest available rate and such charges are based upon the actual weight of the goods to be shipped.

D. Nondiscrimination

As provided in [§2.2-4310\(A\)](#) of the *Code of Virginia*, "in the solicitation or awarding of contracts, no public body shall discriminate against a bidder or offeror because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment. Whenever solicitations are made, each public body shall include businesses selected from a list made available by the Department of Minority Business Enterprise."

E. Taxes

All taxes should be included in the pricing schedule proposed in all bids and proposals. Specific taxes which may apply to each technology procurement include, but are not limited to the following:

- **Excise** – The Commonwealth is generally exempt from paying federal excise taxes, except for air transportation.

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- **State Sales** – The Commonwealth is exempt from paying sales tax in Virginia on purchases of tangible personal property for its use or consumption. If sales taxes are improperly included on the face of a bid, the bidder will be given the opportunity to amend the bid to delete the amount of the taxes included.
- **Sales and Use Tax** – Virginia's Sales and Use tax does not apply to sales of tangible personal property to the Commonwealth of Virginia or its political subdivisions, for their use or consumption. In order to be exempt, such purchases by the Commonwealth must be made pursuant to official purchase orders and must be paid for out of public funds. No exemption is available for state or local government employee purchases of meals or lodging.

F. Contract Pricing Arrangements

As provided in [§2.2-4331](#) of the *Code of Virginia*, VITA may award contracts on a fixed price or cost reimbursement basis, or on any other basis that is not prohibited with the following exceptions:

- Except in case of emergency affecting the public health, safety or welfare, no public contract shall be awarded on the basis of cost plus a percentage of cost.
- A policy or contract for insurance or prepaid coverage having a premium computed on the basis of claims paid or incurred, plus the insurance carrier's administrative costs and retention stated in whole or in part as a percentage of such claims, shall not be prohibited.

G. Computer Equipment Performance Specifications:

[§2.2-2007\(C\)](#) of the *Code of Virginia* provides as follows:

C. If VITA, or any agency or institution authorized by VITA, elects to procure personal computers and related peripheral equipment pursuant to any type of blanket purchasing arrangement under which public bodies, as defined in [§ 2.2-4301](#), may purchase such goods from any vendor following competitive procurement but without the conduct of an individual procurement by or for the using agency or institution, it shall establish performance-based specifications for the selection of equipment. Establishment of such contracts shall emphasize performance criteria including price, quality, and delivery without regard to "brand name." All vendors meeting the Commonwealth's performance requirements shall be afforded the opportunity to compete for such contracts.

H. Samples and Sample Testing

Samples required in a specification or proposal must be submitted prior to bid opening date, unless otherwise directed, accompanied by a descriptive invoice indicating if bidder

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desires return of sample or samples, provided they have not been used or made useless through tests. Return of samples submitted will be at bidder's risk and expense. All samples submitted are subject to test. Award samples may be held for comparison with deliveries. Failure to submit samples when requested may result in rejection of bid. Samples not picked up by bidder within 30 days of award will become the property of the Commonwealth.

Samples may be requested to verify quality levels or to test equipment to determine conformance with the specifications stipulated in a solicitation and/or to determine ability to interface with existing equipment. A request for a sample must be clearly indicated in the solicitation. Samples should be properly labeled, stored, and controlled by the receiving public body, until no longer needed. Those not destroyed during testing may be returned at the bidder's or offeror's expense. If, after 60 days, the samples have not been picked up and bidders or offerors fail to provide disposition instructions, samples may be offered to other agencies or internal operating departments for use. If the items have significant reusable utility value, they should be disposed of using established property disposal procedures. The procurement file must be documented as to disposition of samples.

I. Use of Brand Names

As provided in [§2.2-4315](#) of the *Code of Virginia*, “*unless otherwise provided in the Invitation to Bid, the name of a certain brand, make or manufacturer shall not restrict bidders to the specific brand, make or manufacturer named and shall be deemed to convey the general style, type, character, and quality of the article desired. Any article that the public body in its sole discretion determines to be the equal of that specified, considering quality, workmanship, economy of operation, and suitability for the purpose intended, shall be accepted.*”

J. Lack of Competition

If only one offer or bid or one acceptable offer or bid is received in response to any solicitation, the VITA procurement professional responsible for the solicitation will ascertain the reason for the limited response and make it a matter of record in the procurement file. If no responses were received, it may be possible to amend the solicitation to make the solicitation more attractive to potential or existing industry partners. If there is no way to amend the solicitation that would result in offers, VITA may elect to cancel the solicitation. If only one acceptable bid or offer is received, negotiations or a bid evaluation may be conducted with the offer to ensure that the Commonwealth receives the “best value” or the solicitation may be amended to encourage more offers.

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K. Technology Access Clause

As required by the Information Technology Access Act (§2.2-3500 et seq. of the *Code of Virginia*), all contracts for the procurement of information technology goods by, or for the use of, state agencies and institutions shall include the technology access clause developed by the Secretary of Technology.

Specifically, §2.2-3503 of the *Code of Virginia* provides:

2.2-3503. Procurement requirements.

A. The technology access clause specified in clause (iii) of § [2.2-3502](#) shall be developed by the Secretary of Technology and shall require compliance with the nonvisual access standards established in subsection B of this section. The clause shall be included in all future contracts for the procurement of information technology by, or for the use of, entities covered by this chapter on or after the effective date of this chapter.

B. At a minimum, the nonvisual access standards shall include the following: (i) the effective, interactive control and use of the technology (including the operating system), applications programs, and format of the data presented, shall be readily achievable by nonvisual means; (ii) the technology equipped for nonvisual access shall be compatible with information technology used by other individuals with whom the blind or visually impaired individual interacts; (iii) nonvisual access technology shall be integrated into networks used to share communications among employees, program participants, and the public; and (iv) the technology for nonvisual access shall have the capability of providing equivalent access by nonvisual means to telecommunications or other interconnected network services used by persons who are not blind or visually impaired. A covered entity may stipulate additional specifications in any procurement.

Compliance with the nonvisual access standards shall not be required if the head of a covered entity determines that (i) the information technology is not available with nonvisual access because the essential elements of the information technology are visual and (ii) nonvisual equivalence is not available.

L. Compliance with Section 508 of the Rehabilitation Act

Section 508 of the Rehabilitation Act of 1973 was strengthened in the Workforce Investment Act of 1998. Its primary purpose is to provide access to and use of Federal executive agencies' electronic and information technology (EIT) by individuals with

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disabilities. The statutory language of section 508 is available online by accessing <http://www.section508.gov>.

Section 508 requires Federal agencies to ensure that their procurement of information technology takes into account the needs of all end users – including people with disabilities. The goal of section 508 is that information technology will be compatible with assistive technology. For most products, such as software, web pages, and computers - - achieving compatibility with assistive technology is the goal of section 508.

Section 508 does not require contractors to manufacture information technology to meet Section 508's Access Board's standards, with certain exceptions. However, because Section 508 requires the government to purchase EIT that meets the applicable technical provisions set by the Access Board, there is an incentive for EIT manufacturers and designers to ensure that their products are usable by everyone – including persons with disabilities. Section 508 does not impose requirements on contractors or subcontractors. Instead, it only imposes requirements on the product specifications of EIT procured by federal agencies. Prime contractors may enter into subcontracts in the performance of a federal contract for EIT, but the prime contractor will remain obligated to deliver 508-compliant goods and services under the contract.

VITA may require compliance with Section 508 as a procurement standard for technology goods. Several advantages of such compliance have been identified. They include:

- The federal government adopted Section 508 as a mandatory procurement standard about 18 months ago, so many of VITA's existing and potential industry partners should already be in compliance.
- Barriers for state employees with disabilities to access information are reduced.
- Access by the public to government information and services is increased.
- Underemployment for state employees with disabilities is reduced.
- SWAM-D businesses may be encouraged to develop products to meet the standards needed for compliance with Section 508.
- Compliance with existing requirement to provide reasonable accommodation for state employees under the Americans with Disabilities Act and the Rehabilitation Act is ensured

Several disadvantages of such compliance have also been identified. They include:

- May result in higher costs
- Commonwealth's enterprise architecture has not been fully researched, developed, and deployed.
- Will require training to identify what standards apply; how to perform market research and define minimum standards based on market research; recognize and document need for exceptions based on unavailability or undue burden.

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- Will require monitoring (self or otherwise) to ensure compliance and that the exceptions do not outnumber the standards.
- May result in increased exposure to legal action.
- Possible conflict with new web policies for executive branch agencies that have adopted WAI level 1 compliance.
- Some SWAM businesses may not be able to respond resulting in decreased sales.

IV. Solicitation Submission Procedures

A. Comments concerning specifications

As provided in [§2.2-4316](#) of the *Code of Virginia*, VITA will provide opportunities whereby comments concerning specifications or other provisions in Invitations to Bid or Requests for Proposals may be received via e-mail when sent to the VITA procurement professional in charge of the procurement. These comments will be considered prior to the time set for receipt of bids or proposals or award of the contract. Comments received after the receipt date or after the date of award will not be considered.

B. Receipt and Opening of Formal Sealed Bids and Proposals

Bids or proposals submitted through eVA can be sealed or unsealed. In eVA, sealed bids will be retained in an on-line lock box until the due date and time proscribed in the solicitation. In an unsealed IFB, bids can be opened as they are received. Bidders must ensure that they have submitted their bid through eVA satisfactorily prior to the bid opening date and time. eVA will not allow a bid to be submitted once the bid opening date and time has been reached. The bid tabulation will be available on eVA after the bid opening.

C. Amending a Solicitation

A solicitation may be amended by the VITA procurement professional by issuing a written addendum prior to the date and time set for receipt of responses. Such amendments will follow this procedure:

- VITA will post all addenda to eVA and the VITA website where the solicitation is displayed.
- Addenda must be signed and returned to the VITA's Office of Acquisition Services office by the bidder or offeror prior to the date and time set for receipt of responses. Addendum should be addressed to the procurement professional named in the solicitation.

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- If the bidder or offeror fails to return a signed addendum prior to the due date and time set for receipt of responses, a bid will be declared nonresponsive and/or the proposal will be rejected.

D. Withdrawal of Bids & Proposals after Response Due Date but Prior to Award

As provided in [§ 2.2-4330\(B\)](#) of the *Code of Virginia*, Bids and proposals may be withdrawn from consideration by the bidder or offeror provided:

- The bidder or offeror submits a signed written request within one business day after the bid or proposal due date to the specific purchasing professional named in the solicitation notifying them of their desire to withdraw the bid or proposal due to a clerical mistake; and
- If the bidder or offeror can verify to the VITA purchasing professional's satisfaction that the mistake was clerical and not judgmental, the bid or proposal may be withdrawn.
- If the procurement professional named in the procurement solicitation denies withdrawal of bid or proposal, the bidder or offeror shall be notified in writing the specific reasons for denial.
- No bid or proposal shall be corrected or withdrawn after award of contract or issuance of a purchase order.

E. No Acceptable Offers Negotiation

When no acceptable offers can be reached during the negotiation process, one or more of the following should be considered:

- The solicitation may be cancelled and consideration can be given to revising the statement of needs, terms and conditions or other constraints that may have precluded a successful procurement.
- A Request for Information may be issued as a preliminary process in developing a statement of need or determining the availability of industry partners for a specific product or service.
- Review requirements with end-user to determine a revised statement of needs.

F. Evaluations and Negotiations

Negotiations must be specified in the solicitation document prior to use in the evaluation process. Negotiations are exchanges in either a competitive or sole source environment between VITA and its potential industry partners that are undertaken with the intent of allowing the partner to revise their offer. Revisions may apply to price, schedule, technical requirements or other terms and conditions of the proposed contract. Negotiations are specific to each offer, and shall be conducted to maximize VITA's ability to obtain best value technology goods and services based on the evaluation factors

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set forth in the solicitation. VITA may also give evaluation credit for technical solutions proposed which exceed mandatory minimums or negotiate with offerors for increased performance beyond mandatory minimums. If specified in the solicitation and following the negotiations, the offerors may submit final price adjustments or Best and Final Offers to be used in the final phase of the evaluation process

G. Canceling a Procurement/Keep or Return Bids and Proposals

- An Invitation for Bid, a Request for Proposal, or any other solicitation, or any and all bids or proposals, may be canceled or rejected at any time prior to award. A public body may not cancel or reject an Invitation for Bid, a Request for Proposal, any other solicitation, bid or proposal to avoid awarding a contract to a particular responsive and responsible bidder or offeror. (§ 2.2-4319 of the *Code of Virginia*).
- If a solicitation has been issued and the **due date has not arrived**, the solicitation may be canceled. The following procedure will be used in such instances:
 - A cancellation notice must be posted promptly through eVA and the VITA website where the solicitation is displayed at the time the decision to cancel the solicitation has been reached;
 - Notice shall also be provided to personnel responsible for receipt and opening of bids and proposals to prevent responses from being unintentionally opened;
 - Any bids or proposals received should be returned unopened to the bidder or offeror;
 - The reasons for cancellation or rejection shall be made part of the procurement file.
- When the solicitation **due date is past** and bids or proposals have been opened, the bids or proposals may be rejected and the solicitation program canceled. The following procedure will be used in such instances:
 - A cancellation notice must be posted promptly to all websites displaying the solicitation at the time the decision to cancel the solicitation has been reached;
 - The opened bids or proposals will remain as part of the procurement file;
 - Any duplicate bids or proposals may be destroyed unless the offeror or bidder requests their return at their expense.
 - The reasons for cancellation or rejection shall be made part of the contract file.

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V. Solicitation Response Mistakes or Errors

Except where expressly stated, no plea or claim of error shall be available to a bidder for recovery of any deposit or security required to be paid or posted or as a defense in any legal proceeding for the failure, neglect or refusal of the bidder or offeror to (1) execute a contract that has been awarded by the Commonwealth, (2) accept an order issued by the Commonwealth to a bidder or offeror in accordance with a response submitted by such bidder or offeror, or (3) perform in accordance with the specifications, terms, and conditions of a signed contract.

A. Alterations to Bids or Proposals

Prior to submission of a bid or proposal, alterations may be made, but must be initialed by the person signing the bid or proposal. A single line must be drawn through the information to be changed, insert the desired information and initial the change. Smudged and smeared erasures, strikeouts, or opaque fluid on bid or proposal that affect unit price, quantity, quality, or delivery may result in the rejection of the line item or information involved in the bid or proposal.

B. Mistakes Discovered Before Opening

A bidder or offeror may correct mistakes, amended and/or withdraw a response if the entity issuing the solicitation receives a request to correct, amend and/or withdraw, in writing before the due date and hour. The request must be signed by a person authorized to represent the firm or entity that submitted the response.

C. Mistakes Discovered After Opening, But Before Award

A minor defect or variation of a response from the exact requirements of the solicitation, which does not affect the price, quality, quantity, or delivery schedule for the goods, and services, being procured, may, in the sole discretion of the Commonwealth, be waived or the bidder or offeror may be permitted to correct them, whichever procedure is in the best interest of the Commonwealth. Examples of minor defects, mistakes or variations include but are not limited to the following: (a) Failure to return the number of pages requested in the solicitation. (b) Failure to sign, as instructed, in the space provided, but only if the unsigned response is accompanied by other signed documents indicating the bidder or offeror's intent to be bound.

- Responses may not be withdrawn if the mistakes are attributable, such as:
 - **Judgment Errors-** Where errors are attributed, in the sole discretion of the Commonwealth, to be errors in judgment; such errors may not be corrected.

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- **Errors Where the Intended Correct Response is Evident** - Errors and mistakes such as, but not limited to: typographical, extending unit prices, transposition, and arithmetical, in instance where the mistake and the intended correct response are clearly evident in the response document, the response shall be corrected to the intended correction and may not be withdrawn.
- Responses may be withdrawn if the intended correct response is not evident. A bidder or offeror may be permitted to withdraw a response if a mistake, in the sole discretion of the Commonwealth, is clearly evident in the response document submitted and/or in comparison with other responses.

D. Mistakes Discovered After Award

Bids or proposals containing mistakes shall not be corrected or withdrawn after award of a contract or issuance of an order. No plea or claim of mistake in a bid or resulting contract shall be available as a defense in any legal proceeding brought upon a contract or purchase order awarded to a bidder or offeror as a result of the breach or nonperformance of such contract or order.

VI. EXTENTION OF OFFER ACCEPTANCE TIME

A response shall be valid for the period of time specified in the solicitation. If an award decision has not been made at the end of the stipulated days, the response may be withdrawn at the written request of the bidder or offeror. If the response is not withdrawn at that time, it remains in effect until an award is made or the response is rejected.

VII. BASIS FOR REJECTION OF A SOLICITATION RESPONSE

A. General Information about Rejection

An Invitation for Bids, a Request for Proposal, or any other solicitation, may be canceled or rejected at the sole discretion of the Commonwealth. The reason for cancellation or rejection shall be made part of the procurement file. The solicitation may be reissued with or without revised specifications incorporating alternate features, the latest in technology or may result in substantial savings. A solicitation shall not be cancelled or rejected solely to avoid awarding a contract to a particular responsive and responsible bidder or offer. (§ 2.2-4319 of the *Code of Virginia*.)

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B. Late Bids or Proposals

Late Invitation for Bids, Requests for Proposal, or any other solicitations received via eVA after the date and time specified for receipt in the solicitation document shall not be considered. A late response shall be marked “Late”, if sealed, the late response shall not be opened, and placed in the procurement file.

C. Debarred Industry Partner or Contractor

Response from an industry partner who has been debarred under [§2.2-4321](#) of the *Code of Virginia* from bidding or contracting with the Commonwealth on a basis of unsatisfactory performance or for any other reason, shall be rejected.

Causes for Industry Partner Debarment

The CIO may make the determination to debar any individual or firm for any of the following reasons or any other reason not specifically listed herein:

- Any violation or perceived violation of VITA’s industry partner Code of Ethics.
- Breach (including anticipatory breach) of contract with VITA or any other state agency.
- Sale or attempted sale to VITA or any other state agency of items or services which are required to be purchased under a mandatory-use state contract with another industry partner, when the industry partner knew or had reason to know that the items or services are required to be purchased under that contract.
- Stating an unwillingness or inability to honor a binding bid. A mere request to withdraw a bid, which does not otherwise state an unwillingness or inability to perform, is not a cause for debarment.
- Falsifying or misrepresenting any manufacturer's specifications or warranties in order to appear responsive to a solicitation.
- Conferring or offering to confer any gift, gratuity, favor, or advantage, present or future, upon any employee of VITA or any state agency who exercises any “official responsibility” for a “procurement transaction” as those terms are defined in [§2.2-4368](#) of the *Code of Virginia* . It is not necessary that the offer be accepted by the employee, or that the offer is made with intent to influence the employee in an official act. Extending to any state employee exercising official responsibility for a procurement transaction any discount or privilege not available to all state employees is considered to be offering an advantage.

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- Failing to disclose a condition constituting a conflict of interest by any officer, director, owner, or partner of the industry partner in a contract or purchase order awarded by VITA or any other agency of the state (§ 2.2-3106 of the *Code of Virginia*).
- Any cause indicating that the individual or firm is not a responsible industry partner in the sole discretion of VITA or the CIO.
- A determination by the CIO that an industry partner has used abusive or obscene language or behaved in a harassing or threatening manner toward any VITA procurement professional or employee during the performance of their duties or as a result of the performance of their duties.
- Sale of goods or services to the Commonwealth or VITA when such sale is prohibited by any debarment then in effect.
- Conviction of any criminal offense involving public contracting. Examples include, but are not limited to, bribery (§18.2-447 of the *Code of Virginia*,) and knowingly making a false statement in regard to collusion on a solicitation (§18.2-498.4 of the *Code of Virginia*.). Conviction for any of the above of any officer, director, owner, partner, agent, or related business entity of an industry partner shall constitute grounds for the removal of the vendor.
- Court judgment finding a violation of either federal or state procurement laws or antitrust laws.
- Conviction of any offenses indicating a lack of moral or business integrity.
- Failure to pay procurement costs pursuant to a contract termination for default.

Length of Debarment

The CIO will determine the length of debarment for any industry partner on a case-by-case basis. A debarment may be lifted or suspended at any time if the CIO determines that such action is in the best interest of VITA and the Commonwealth.

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VIII. SOURCE OF SUPPLY SELECTION

A. Mandatory Sources

All agencies and institutions are required to use established mandatory-use term contracts for technology goods and/or services when such contracts are mandated by VITA.

B. Prequalified Industry Partners or products

VITA may maintain a list of prequalified suppliers which will consist of a list of specific contractors who have been evaluated and determined to be acceptable in meeting predetermined minimum acceptable quality and performance of equipment and/or level of service. (§2.2-4317 of the *Code of Virginia*)

C. Surplus Property

To avoid unnecessary purchases of new equipment and to realize substantial savings for like new equipment, agencies should screen for available equipment within their own agency, from other state agencies and institutions, and the Surplus Property Program.

D. Cooperative Procurement Arrangements between State Agencies or institutions

To realize substantial savings and improved support services, two or more agencies and institutions, or several regional states may combine estimated usage to issue a solicitation and establish a contract. (§ 2.2-4304 of the *Code of Virginia*) Such arrangements must have the prior approval of the CIO and all cooperative procurements of telecommunications and information technology goods and services of every description will be handled through VITA's Office of Acquisition Services.

IX. MISCELLANEOUS PROCEDURES AND SPECIAL PROVISIONS

A. Exemptions

The following items do not have to be purchased through VITA:

- Services that are incidental to the purchase of supplies, materials or equipment, such as installation services.
- Services provided by other government (federal, state or local) employees when performing the service as a part of their normal government function.

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- Other goods and services exempted by the Chief Information Officer when the purchase through VITA would not provide any price or quality advantages to the Commonwealth.

B. Waiver of Competition

- Competition may be waived only in certain circumstances and only when deemed to be in the best interest of the Commonwealth. When a waiver of competition is contemplated for a technology purchase and the estimated total amount of the purchase exceeds an agency's delegated purchase authority, the procurement request, along with the justification should be signed by the agency head or his or her designee and then must be sent to VITA for review and approval prior to the agency taking any further action.
- The following lists some circumstances of when competition may be waived in cases when:
 - A needed product is only practicably available from one source. (sole source)
 - Standardization or compatibility is the overriding consideration. (Could be proprietary purchase where competition exists)
 - The amount of the purchase is too small (less than \$500) to justify soliciting competition or where a purchase is being made and a satisfactory price is available from a previous contract.

C. Guarantees and Warranties

The following considerations should be taken into account when deciding the appropriate warranty or guarantee term and condition to include in solicitations:

- In solicitations where goods, furnish and install or services are required, determine if commercial warranty provisions are acceptable for a particular good or service;
- Determine if procuring agency wants to specify the length of time the warranty is to run;
- Determine if warranty is needed to prevent damage to existing resource information from computer viruses or shut down devices;
- Select the guarantee or warranty special term and condition that best suits the needs of the agency for the particular solicitation; and
- When considering a non-industry standard warranty, the end-user should obtain the appropriate cost associated with the desired warranty; provide a justification for the desired warranty and any additional cost to be included in the procurement file.

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D. Special Delegations

The CIO may make special delegations to agencies/institutions for the purchase of certain designated commodity codes or for certain technology items or for specific technology projects as needed.

E. IT Procurement Customer Assistance

VITA will provide technology procurement customer assistance through its Office of Acquisition Services.

F. Procurements that Require FCC Licensing

All facilities, equipment and services that require Federal Communications Commission (FCC) licensing, e.g. uplinks, television and radio broadcast frequencies, microwave, two-way radio, etc. are the responsibility of VITA to coordinate and acquire. All state agencies, whether in scope or not, must submit all supporting documentation to VITA's Integrated Telecommunication Branch, prior to any acquisition of equipment or service. There is no dollar amount associated with this requirement. Any device requiring FCC authorization or licensing must be approved by VITA/ITD. If the equipment or services are on a current VITA state contract, VITA/ITD will approve the procurement and return the request with the appropriate written approval. If the equipment or services are not currently available through an existing contract process, VITA/ITD will coordinate with VITA Acquisition Services Division (ASD) to acquire the requested goods or services on behalf of the requesting agency.

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X. STANDARDS OF CONDUCT/ CODE OF ETHICS

VITA is committed to the premise that all technology procurements and all relationships with its industry partners shall be conducted in the most professional and objective manner possible. VITA's procurement professionals are entrusted with protecting the safety and welfare of the public's trust and the Commonwealth's tax dollars. All VITA procurement professionals shall pursue a course of conduct that does not raise any appearance of impropriety or suspicion among the public or its industry partners. Therefore, they shall avoid acts which are improper, illegal or give the appearance of impropriety. This conduct is particularly important for procurement officials who are charged with the disposition of Commonwealth funds.

All Commonwealth procurement officials and industry partners shall be cognizant of the laws which govern public procurements in the Commonwealth, such as the VPPA, the State and Local Government Conflicts of Interest Act, and the Government Frauds Act. All personnel having official responsibility for procurement transactions shall be familiar with Article 4, *Code of Virginia*, [§§2.2-4377](#), entitled "Ethics in Public Contracting."

VITA's purchasing professionals shall adhere to the highest level of professionalism in discharging their official duties and responsibilities. The nature of purchasing functions make it critical that everyone in the purchasing process remain independent, objective and free from any perception of impropriety. Any erosion of public trust or any shadow of impropriety is detrimental to the integrity of the purchasing system. Consequently, the credibility of an objective purchasing office requires that purchasing officers and industry partners follow a clear standard of conduct/code of ethics. Such standards/code of ethics is designed to prevent actual and potential industry partners from influencing Commonwealth purchasing officers and employees in discharging their official duties. Furthermore, these standards/Codes of Ethics will assist VITA's purchasing professionals and employees in addressing situations in which their independent judgment could be reasonably compromised.

A. VITA Procurement Professionals Code of Ethics

VITA procurement professionals will exhibit the highest ideals of honor and integrity in all public and personal relationships in order to merit the respect and inspire the confidence of the Commonwealth's agencies and industry partners and the public being served.

- VITA procurement professionals will provide and foster an environment where all business concerns, large or small, majority or minority-owned are afforded an equal opportunity to compete for the Commonwealth's business.

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- VITA procurement professionals shall avoid the intent and appearance of unethical or compromising practices in actions, relationships and communications. VITA procurement professionals understand that they must avoid the appearance of impropriety or any action which might reasonably result in the perception of impropriety.
- VITA procurement professionals shall conduct all procurement activities on behalf of the Commonwealth in accordance with the laws of the Commonwealth. They will obey all relevant laws and remain alert to any and all legal ramifications of procurement decisions.
- VITA procurement professionals shall refrain from any private or professional activity that would create a conflict between personal interests and the interests of the Commonwealth as defined in §2.2-3106 and §2.2-4567 et seq. of the Code of Virginia. VITA procurement professionals must avoid any appearance of a conflict and should continually evaluate their outside interests which have the potential of being at variance with the best interests of the Commonwealth.
- Specifically, VITA procurement professionals shall **not**:
 - Engage in outside business or employment by any outside company, which may encroach upon their primary responsibilities as a procurement officer of the Commonwealth;
 - Engage in any private or business relationship or activity which could result in a conflict of interest or could reasonably be perceived as a conflict of interest.
 - Engage in business with, or employment by a company, which is an industry partner to the Commonwealth;
 - Lend or borrow money from any industry partner.
 - Maintain a controlling interest in a firm that does business with VITA;
 - Accept trips, lodging, meals, or gifts from industry partners;
 - Provide inside information to prospective bidders;
- VITA procurement professionals shall promote positive industry partner relationships through professionalism, responsiveness, impartiality and objectivity in all phases of the procurement cycle.

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- VITA procurement professionals shall enhance the proficiency and stature of the Commonwealth's purchasing community by adhering to the highest standards of ethical and professional behavior.

B. NIGP Code of Ethics

The following are the purchasing ethics and guidelines published by the National Institute of Governmental Purchasing, Inc. (NIGP), an organization dedicated to increasing the professionalism of public purchasing through educations and certification, technical information and services, and research and publications. VITA's procurement professionals shall also abide by the NIGP Code of Ethics. The Institute believes, and it is a condition of membership, that the following ethical principles should govern the conduct of every person employed by a public sector procurement or materials management organization.

- Seeks or accepts a position as head or employee only when fully in accord with the professional principles applicable thereto, and when confident of possessing the qualifications to serve under those principles to the advantage of the employing organization.
- Believes in the dignity and worth of the service rendered by the organization and the societal responsibilities assumed as a trusted public servant.
- Is governed by the highest ideals of honor and integrity in all public and personal relationships in order to merit the respect and inspire the confidence of the organization and the public being served.
- Believes that personal aggrandizement or personal profit obtained through misuse of public or personal relationships is dishonest and not tolerable.
- Identifies and eliminates participation of any individual in operational situations where a conflict of interest may be involved.
- Believes that members of the Institute and its staff should at no time or under any circumstances accept directly or indirectly, gifts, gratuities, or other things of value from suppliers which might influence or appear to influence purchasing decisions.
- Keeps the governmental organization informed, through appropriate channels, on problems and progress of applicable operations by emphasizing the importance of the facts.

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- Resists encroachment on control of personnel in order to preserve integrity as a professional manager. Handles all personnel matters on a merit basis. Politics, religion, ethnicity, gender and age carry no weight in personnel administration in the agency being directed or served.
- Seeks or dispenses no personal favors. Handles each administrative problem objectively and emphatically without discrimination.
- Subscribes to and supports the professional aims and objectives of the National Institute of Governmental Purchasing, Inc.

C. Guidelines to the NIGP Code of Ethics

Responsibility to your employer

- Follow the lawful instructions or laws of the employer.
- Understand the authority granted by the employer.
- Avoid activities which would compromise or give the perception of compromising the best interests of the employer.
- Reduce the potential for any charges of preferential treatment by actively promoting the concept of competition.
- As agents for the employer, obtain the maximum benefit for funds spent.

Conflict of Interest

- Avoid any private or professional activity that would create a conflict between your personal interest and the interests of your employer.

Perception

- Avoid the appearance of unethical or compromising practices in relationships, actions and communications.
- Avoid noticeable displays of affection which may give an impression of impropriety.
- Avoid holding business meetings with suppliers outside the office. When such meetings do occur, the meeting location should be carefully chosen so as not to be perceived as inappropriate by other persons in the business community or by your peers.

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Gratuities

- Never solicit or accept money, loans, credits or prejudicial discounts, gifts, entertainment, favors or services from your present or potential suppliers, which might influence or appear to influence purchasing decisions.

D. VITA Industry-Partners Code of Ethics

- Industry partners who do business with VITA and the Commonwealth shall avoid all situations where propriety or financial interests, or the opportunity for financial gain, could lead to favored treatment for any organization or individual.
- Industry partners shall avoid circumstances and conduct which may not constitute actual wrongdoing, or a conflict of interest, but might nevertheless create the appearance of impropriety, thus compromising the integrity of VITA and the Commonwealth.
- The Code of Ethics shall be made a part of each IFB, RFP and should be attached to every contract and agreement to which the Commonwealth is a party.
- The Code of Ethics shall be distributed to all parties who presently do business with the Department/Commonwealth and to all those parties anticipating doing business with the Commonwealth.
- No vendor shall employ any Commonwealth employee in the business of the vendor or professional activity in which the vendor is involved with the Department officer or employee.
- No industry partner shall offer or provide any interest, financial or otherwise, direct or indirect, in the business of the vendor or professional activity in which the vendor is involved with the Department officer or employee.
- No industry partner shall cause or influence, or attempt to cause or influence any Commonwealth officer or employee in his or her official capacity in any manner which might tend to impair the objectivity or independence of judgment of that officer or employee.
- No industry partner shall cause or influence, or attempt to cause or influence any Commonwealth/VITA employee to use or attempt to use his or her official position to secure any unwarranted privileges or advantages for that vendor or for any other person.

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- No industry partner shall offer any Commonwealth/VITA employee any gift, favor, service or other thing of value under circumstances from which it might be reasonably inferred that such, gift, service or other thing of value was given for the purpose of influencing the recipient in the discharge of his or her official duties.
- Officers or employees of the Commonwealth/VITA shall not be permitted to accept meals, beverages, tickets to entertainment and/or sporting events or any other item which could be construed as having more than nominal value. (An officer/employee could accept food/refreshments of relatively low value provided during the course of a meeting sponsored by an industry partner.)
- Industry partners shall accept responsibility for representations made on behalf of their company by employees or agents.
- Industry partners shall make available accurate and completely understandable pricing, schedules and terms and conditions.
- Industry partners shall provide accurate and timely billing for products and services rendered.
- Industry partners shall treat competitors and employees of the Commonwealth/VITA with respect and professionalism, refraining from making any disparaging comments, accusations, unfavorable implications or providing misleading information about a competitor's products or services.
- Industry partners shall maintain positive and ongoing communication with VITA representatives regarding all partnering presentations, unsolicited proposals and marketing plans directed toward VITA customer agencies.
- **Non-collusion requirement:** Industry partners shall not, nor may any member, representative or employee of the firm, corporation or company represented by him, enter into any combination, collusion or agreement with any person relative to any price to be bid by anyone nor to prevent any person from bidding nor to induce anyone to refrain from bidding, and that its bid be made without reference to any other bid and without any agreement, understanding or combination with any other person in reference to such person.
- **Fair Dealing:** Any products and services offered to the Commonwealth shall be of the highest quality available and pricing shall always be fair and the best available to similarly situated clients. The provision of substandard goods and services, overcharging or the billing of any good or service not provided shall be sufficient cause for the Commonwealth to refuse any future business with any

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entity, to liquidate surety instruments, and to pursue all remedies available under the law.

XI. POSITIVE PARTNERING RELATIONSHIPS BETWEEN VITA AND OUR INDUSTRY PARTNERS

Developing and maintaining good relationships with our industry partners is important to the success of technology procurement for VITA and the Commonwealth. Whenever an industry partner (or agency) fails to meet the requirements of a contract or purchase order or there is confusion about a solicitation, the problem needs to be discussed and resolved to everyone's satisfaction. An atmosphere of on-going and open discussion and communication will help prevent future problems and maintain good working relations. Most minor problems can be worked out with a simple e-mail, call or visit, but if not, industry partners should feel free to bring the matter to the attention of the Office of Acquisition Services or the particular procurement professional for assistance in resolving the dispute or requesting additional information. The following are a few things to keep in mind in maintaining excellent, professional working relationships between VITA and its industry partners:

- Maintain and practice, to the highest degree possible, business ethics, respect, professional courtesy, and competence in all transactions.
- Preclude from showing favoritism or being influenced by industry partners through the acceptance of gifts, gratuities, loans or favors.
- Adhere to and protect the industry partner's business and legal rights to confidentiality for trade secrets, and other proprietary information.
- VITA and its industry partners will exercise care to assure realistic expectations, goals and objections are part of every procurement.
- VITA and its industry partners should make an enduring commitment with real involvement of management on both sides on long term technology projects.

XII. OPEN RECORDS/ FREEDOM OF INFORMATION ACT

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A. Public Inspection of Certain Records

As provided in [§2.2-4342](#) of the *Code of Virginia*, all proceedings, records, contracts and other public records relating to procurement transactions shall be open to the inspection of any citizen, or interested person, firm or corporation in accordance with the Virginia Freedom of Information Act. ([§2.2-3700 et seq.](#)) and as follows:

[§ 2.2-4342](#). Public inspection of certain records.

A. Except as provided in this section, all proceedings, records, contracts and other public records relating to procurement transactions shall be open to the inspection of any citizen, or any interested person, firm or corporation, in accordance with the Virginia Freedom of Information Act ([§ 2.2-3700 et seq.](#)).

B. Cost estimates relating to a proposed procurement transaction prepared by or for a public body shall not be open to public inspection.

C. Any competitive sealed bidding bidder, upon request, shall be afforded the opportunity to inspect bid records within a reasonable time after the opening of all bids but prior to award, except in the event that the public body decides not to accept any of the bids and to reopen the contract. Otherwise, bid records shall be open to public inspection only after award of the contract.

D. Any competitive negotiation offeror, upon request, shall be afforded the opportunity to inspect proposal records within a reasonable time after the evaluation and negotiations of proposals are completed but prior to award, except in the event that the public body decides not to accept any of the proposals and to reopen the contract. Otherwise, proposal records shall be open to public inspection only after award of the contract.

E. Any inspection of procurement transaction records under this section shall be subject to reasonable restrictions to ensure the security and integrity of the records.

F. Trade secrets or proprietary information submitted by a bidder, offeror or contractor in connection with a procurement transaction or prequalification application submitted pursuant to subsection B of [§ 2.2-4317](#) shall not be subject to the Virginia Freedom of Information Act ([§ 2.2-3700 et seq.](#)); however, the bidder, offeror or contractor shall (i) invoke the protections of this section prior to or upon submission of the

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data or other materials, (ii) identify the data or other materials to be protected, and (iii) state the reasons why protection is necessary.

B. Virginia Freedom of Information Act

Records are open to the public in accordance with the Virginia Freedom of Information Act, except as provided in the [§2.2-3700](#) et seq. of the *Code of Virginia* and [§2.2-4342](#) of the *Code of Virginia*.

§ [2.2-3705](#). *Exclusions to application of chapter.*

82. Records relating to the negotiation and award of a specific contract where competition or bargaining is involved and where the release of such records would adversely affect the bargaining position or negotiating strategy of the public body. Such records shall not be withheld after the public body has made a decision to award or not to award the contract. In the case of procurement transactions conducted pursuant to the Virginia Public Procurement Act (§ [2.2-4300](#) et seq.), the provisions of this subdivision shall not apply, and any release of records relating to such transactions shall be governed by the Virginia Public Procurement Act.

§ [2.2-3711](#). *Closed meetings authorized for certain limited purposes*

30. Discussion of the award of a public contract involving the expenditure of public funds, including interviews of bidders or offerors, and discussion of the terms or scope of such contract, where discussion in an open session would adversely affect the bargaining position or negotiating strategy of the public body.

C. Costs

VITA may make reasonable charges not to exceed its actual cost incurred for the copying, search time and computer time expended in the supplying of procurement records in response to a public request. Upon request and pursuant to [§2.2-3704F](#) of the *Code of Virginia*, VITA will furnish in advance an estimate of the charges for supplying a copy of the procurement records.

[§2.2-3704\(H\) and \(I\)](#) of the *Code of Virginia*) allow for VITA to require the advance payment of record copying fees if the charge is likely to exceed \$200.00 as provided below:

H. In any case where a public body determines in advance that charges for producing the requested records are likely to exceed \$200, the public body may, before continuing to process the request, require the requester

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to agree to payment of a deposit not to exceed the amount of the advance determination. The deposit shall be credited toward the final cost of supplying the requested records. The period within which the public body shall respond under this section shall be tolled for the amount of time that elapses between notice of the advance determination and the response of the requester.

I. Before processing a request for records, a public body may require the requester to pay any amounts owed to the public body for previous requests for records that remain unpaid 30 days or more after billing.

XIII. PROTESTS

- **Protest of Award or Decision to Award:**

Any bidder or offeror, (including sole sources) who desires to protest the award or decision to award a contract shall submit the protest in writing within 10 days of the award or notice of intent to award, whichever occurs first (§2.2-4360 of the *Code of Virginia*). If protest depends upon information contained in public records pertaining to the procurement that are subject to inspection under §2.2-4342 of the *Code of Virginia*, the ten days for the protest filing shall not commence until those records are available for inspection.

- **No protest shall lie for a claim that the selected bidder or offeror is not a responsible bidder or offeror.**

- **Written protest**

Written protest shall contain the basis for the protest and the relief sought.

- **Protest decision**

Public body shall issue a written decision within 10 days stating the reasons for granting or denying the protest. The protest decision shall be final unless the bidder/offeror appeals within 10 days of receipt of the decision by invoking administrative procedures as proscribed by §2.2-4365 of the *Code of Virginia* or legal action as provided in §2.2-4364 of the *Code of Virginia*.

- **If decision to award determined to be arbitrary and capricious prior to award:**

If VITA has determined that a decision to award was arbitrary and capricious and the award has not been made, the proposed award shall be cancelled or revised. If arbitrary and capricious determination is made after award but before performance

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has begun, performance may be enjoined. If performance has begun, the awarded contract may be declared void and contractor shall be compensated for cost of performance, with the exception of lost profits, up to contract void date. (§2.2 - 4360(B) of the *Code of Virginia*).

- **Upon finding of fraud or corruption or violation of Article 6 (§2.2-4367 et seq. of the *Code of Virginia*):**

Contract award to a particular bidder may be enjoined.

- **Use of Alternative Dispute Resolution Required**

Specifically, if a protest decision is appealed and the administrative appeals procedure is requested pursuant to §2.2-4365 of the *Code of Virginia*, VITA will require that the protesting party submit its appeal to an alternative dispute resolution procedures (ADR) established by VITA. In the event that the dispute is not resolved successfully through ADR procedures, the protesting party may then pursue remedies under the administrative appeals procedure or institute legal action as proscribed in §2.2-4364 of the *Code of Virginia*.

- **Effect of appeal on Contract:**

Pending protests or appeals shall not affect an awarded contract. (§2.2-4361 of the *Code of Virginia*).

- **Stay of award during Protest**

If a contract has not yet been awarded and a timely protest (as defined in §2.2-4360 of the *Code of Virginia*) or a timely legal action (§2.2-4364 of the *Code of Virginia*) has been filed, no further action will be taken to award that contract without a written determination that the award is necessary to protect the public interest or the bid/offer is subject to expire. (§2.2-4362 of the *Code of Virginia*).

- **Frivolous Protests**

As part of its effort to make technology procurements smarter, faster and better, VITA intends to discourage frivolous protests and encourage free and objective fair dealing with its industry partners. Toward that end, VITA will establish a procedure for identifying frivolous protests. After VITA has identified as protest as frivolous and notified the filing industry partner of such, the industry partner would be allowed to withdraw any frivolous protest within five days of filing. VITA will determine, if, in its opinion, a protest is frivolous if it has no valid basis for complaint or due to the protest being directed at the procurement outcome or successful industry partner, instead of the procurement process itself.

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An industry partner who has filed more than two (2) previously identified frivolous protests during any preceding 24 month period (which were not later withdrawn by the industry partner after being identified as frivolous by VITA) may be required to post a bond as a condition precedent to filing another protest. The bond shall be payable to VITA in an amount equal to 10 percent of the value of the contract sought to be procured. The bond shall be for an indeterminate period to cover the duration of the protest and conditioned to provide VITA indemnification for the direct and consequential costs, damages, and expenses arising out of the protest filing, including but not limited to VITA's costs for processing the protest, delaying the contract award, and litigation (including attorneys fees).

XIV. Definitions

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Office of Acquisition Services (OAS): The Office of Acquisition Services is a division of the Department of Information Technology (DIT). OAS is responsible for the establishment of all state contracts for ADP goods and services and all telecommunications equipment and services. In addition, OAS provides unlimited support to Dot's Data Center in its role as a Service Bureau to all agencies, institutions and localities of the Commonwealth of Virginia.

Appeal: Action taken by a bidder, offeror (actual or prospective) or by a contractor to seek a hearing before a disinterested person or panel or in an appropriate circuit court challenging a decision in accordance with Sections 2.2-4364 or 2.2-4365 of the *Virginia Public Procurement Act*.

Arbitration: A process by which a dispute between two contending parties is presented to one of more disinterested parties for a decision. Resolution of a disagreement by such a process.

Automated Data-Processing Equipment (ADPE): Computers and processors, including microcomputers, array processors and floating point processors; memory boards and systems; disk and magnetic tape devices, including disk packs and data modules; CRT display equipment, including graphics terminals, printers and teleprinters; plotters and digitizers; encoders, punches and readers; peripheral controllers, data converters, interface boards and tape certifiers; and data communications equipment, including communications controllers or front-end processors and network analyzers, testers, diagnostic systems, acoustic couplers, disk cartridges and diskettes.

Best and Final Offer (BAFO): The last offer provided by an offeror in response to a Request for Proposals and all further negotiation ceases. When the provision for receiving best and final offers is included in an RFP, offerors are given the opportunity to submit a best and final offer after negotiations have been held. After the best and final offers are submitted, no further negotiations shall be conducted with any of the offerors and the decision to award is based on rescoring of the best and final offers.

Best Value: The overall combination of quality, price, and various elements of required services that in total are optimal relative to a public body's needs, as predetermined in a solicitation. Best value concepts may be applied when procuring goods and nonprofessional services, but not construction or professional services. The criteria, factors, and basis for the consideration of best value and the process for the consideration of best value shall be as stated in the procurement solicitation (*Code of Virginia*, § 2.2-4301).

Bid: A competitively priced offer made by an intended seller, usually in reply to an Invitation for Bids (IFB). A price offer made at a public auction.

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Bid Bond: an insurance agreement in which a third party agrees to be liable to pay a certain amount of money in the event a selected bidder fails to accept the contract as bid.

Bidder: One who submits a competitively priced offer in response to an Invitation for Bids (IFB).

Blanket Purchase Agreement (BPA): An arrangement under which a purchaser contracts with a vendor to provide for a purchaser's frequent, repetitive, small-order requirements for an item(s) or a service, on an as-required and over-the-counter basis. Properly prepared, such an arrangement sets a limit on the period of time it is valid and the maximum amount of money which may be spent at one time, or within a specified period, and specifically identifies those persons authorized to order or accept goods. The BPA may also contain other terms and conditions, such as the discount or the specific price list that applies to purchases made under the agreement and what items and services are included (or excluded) under the agreement.

Board: means the Information Technology Investment Board created in §2.2-2452 of the *Code of Virginia*.

Chief Information Officer or CIO: means the Chief Information Officer appointed pursuant to §2.2-2000 of the *Code of Virginia*.

Collusive Bidding: An unethical and illegal practice in which suppliers act in collusion to fix their bids in a collectively advantageous manner.

Communications Services: includes telecommunications services, automated data processing services and management information systems that serve the needs of state agencies and institutions. (§2.2-2001 of the *Code of Virginia*).

Competitive Bidding: The offer of firm bids by individuals or firms competing for a contract, privilege, or right to supply specified services or goods.

Competitive Negotiation: A method for purchasing goods and services, usually of a complex and technical nature whereby qualified individuals or firms are solicited by means of a Request for Proposals (RFP). Negotiations are conducted with selected offerors and the best proposal, as judged against criteria contained in the Request for Proposals, is accepted and an award issued.

Competitive Sealed Bid: A bid submitted in a sealed envelope to prevent disclosure of its contents before the deadline set for the receipt of all bids. Sealed bidding procedures are required on procurements of \$50,000 or more. Competitive sealed bidding shall not be used to contract for professional services.

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Computer Database: means a structured collection of data or records residing in a computer.

Consumer Price Index (CPI): The Consumer Price Index is a measure of the average change in prices over time in a fixed market basket of goods and services. Two CPIs are published: 1) the CPI for All Urban Consumers (CPI-U) which covers about 80% of the total populations and 2) the CPI for Urban Wage Earners and Clerical Workers (CPI-W) which covers 32% of the total population. The CPI is based upon prices of food, clothing, shelter, transportation, medical care, and other goods and services that people buy for day-to-day living.

Contract, Cost-Plus-A-Fixed-Fee: A cost-reimbursement type contract that provides for the payment of a fixed fee to the contractor. The fixed fee, once negotiated, does not vary with the actual cost but may be adjusted as a result of any subsequent changes in the scope of work or services to be performed under the contract.

Contract, Cost-Plus-A-Percentage-Of-Cost: A form of contract which provides for a fee or profit at a specified percentage of the contractor's actual cost of accomplishing the work. Except in case of emergency affecting the public health, safety or welfare and for some insurance contracts, no public contract shall be awarded on the basis of cost plus a percentage of cost. (§2.2-4331 of the *Code of Virginia*)

Contract, Design-Build: A contract between a public body and another party in which the party contracting with the public body agrees to both design and build the structure, roadway or other item specified in the contract.

Contract, Fixed Price: A contract that provides for a firm unit or total price to be established at the time of order placement or contract award. The contractor bears the full risk for profit or loss.

Contract, Fixed Price, Incentive: A fixed price is agreed upon with a target cost/profit, a ceiling price, and a profit formula. Below target, the contractor and state share savings. Above ceiling, the contractor must assume all costs.

Contract, Fixed-Price With Escalation/De-escalation: A fixed price type of contract that provides for the upward and downward revision of the stated contract price upon the occurrence of certain contingencies (such as fluctuations in material costs and labor rates) specifically defined in the contract.

Contract, Requirements Type: A form of contract covering long-term requirements used when the total quantity required cannot be definitely fixed, but can be stated as an estimate or within maximum and minimum limits, with deliveries on demand. Such contracts are usually for one year or more in duration.

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Contract, Service: A contract for work to be performed by an independent contractor wherein the service rendered does not consist primarily of the acquisition of equipment or materials, or the rental of equipment, materials and supplies.

Contract, Time and Material: A contract providing for the procurement of supplies or services on the basis of direct labor hours at specified fixed hourly rates (which include direct and indirect labor, overhead, and profit) and material at cost, or at some bid percentage discount from manufacturer's catalog or list prices.

Cooperative Procurement: A procurement by a public body with one or more other public bodies, for the purpose of combining requirements for the purchase of like goods and/or services in order to increase efficiency and/or reduce administrative expenses.

Cure Notice: A notice, either oral or in writing, that informs the Contractor that he or she is in default and states what the Contractor has to do to correct the deficiency. If the notice is oral it shall be confirmed in writing.

Division of Purchases and Supply (DPS): The Division of Purchases and Supply is a division of the Department of General Services. DGS/DPS is the State's centralized purchasing agency for materials, equipment, supplies, nonprofessional service and printing. DGS/DPS prescribes the rules and regulations for the purchase of materials, supplies, equipment, nonprofessional services, and printing (*Code of Virginia, § 2.2-1109* et al).

Dispute Resolution Proceeding – means any structured process in which a neutral assists parties to a dispute in reaching a voluntary settlement by means of dispute resolution processes such as mediation, conciliation, facilitation, partnering, fact-finding, neutral evaluation, use of ombudsmen or any other proceeding leading to a voluntary settlement. (§2.2-4115 of the *Code of Virginia*).

Drug-free Workplace: A site for the performance of work done in connection with a specific contract awarded to a contractor in accordance with the *VPPA*, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of a contract.

Fair Market Value: Lowest purchase price paid by the state for like items or services purchased in a similar quantity within the last six months. If this information is not available, then the lowest of three phone quotes verified by price indices or purchases made by other government entities will be used.

Force Majeure: An irresistible or extraordinary force, natural event, or effect that cannot be reasonably anticipated or foreseen, prevented, or controlled. An act of God.

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Goods: Material, equipment, supplies, printing, and automated data processing hardware and software (*Code of Virginia*, § 2.2-4301).

Hazardous Material: A substance or material which has been determined by the U. S. Secretary of Transportation to be capable of posing an unreasonable risk to health, safety, and property when transported in commerce.

Informality: A minor defect or variation of the bid or proposal from the exact requirements of the Invitation for Bids or the Request for Proposals, which does not affect the price, quality, quantity, or delivery schedule for the goods, services or construction being procured (*Code of Virginia*, § 2.2-4301).

Information Technology Investment Board: see §2.2-2452 of the *Code of Virginia*.

Invitation for Bids (IFB): A document, containing or incorporating by reference the specifications or scope of work and all contractual terms and conditions, that is used to solicit written bids for a specific requirement for goods or nonprofessional services. This type of solicitation is also referred to as an Invitation to Bid.

Information Technology: means telecommunications, automated data processing, databases, the Internet, management information systems, and related information, equipment, goods, and services.

Life-Cycle: The type of methodology to be used in project development, e.g. System Development Methodology, Information Engineering Methodology, or Rapid Application Development Methodology. (PMBOK)

Life-Cycle Cost: The overall estimated cost for a particular object over the time corresponding to the life of the object, including direct and indirect initial costs plus any periodic or continuing costs for operation and maintenance. (GAO).

Life-Cycle Costing: A cost-analysis tool which incorporates not only the purchase price of a piece of equipment, but all operating and related costs over the life of the item, including maintenance, down time, energy costs, etc., as well as salvage value. The concept of including acquisition, operating, and disposal costs when evaluating various alternatives. (PMBOK) It is also defined as cost-analysis tool which incorporates not only the purchase price of a piece of equipment, but all operating and related costs over the life of the item, including maintenance, down time, energy costs, etc., as well as salvage value.

Liquidated Damages: A sum stated in a contract to be paid as ascertained damages for failure to perform in accordance with the contract. The damage figure stipulated must be a reasonable estimate of the probable loss to the agency, and not calculated simply to impose a penalty on the contractor.

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Major information technology project: means any state agency information technology project that (i) is mission critical, (ii) has statewide application, or (iii) has a total estimated cost of more than \$1 million.

Mediation: means a process in which a neutral facilitates communication between the parties and without deciding the issues or imposing a solution on the parties enables them to understand and resolve their dispute. (§2.2-4115 of the *Code of Virginia*.)

Minority-owned/controlled Business: A business enterprise that is owned or controlled by one or more socially or economically disadvantaged persons. Such disadvantage may arise from cultural, racial, chronic economic circumstances or background or other similar cause. Such persons include, but are not limited to Blacks, Hispanic Americans, Asian Americans, American Indians, Eskimos, and Aleuts.

Multiple Awards: The award of multiple contracts for goods or services other than professional services, meeting the same specifications, resulting from one solicitation. When a Multiple Award clause is included in an Invitation for Bids/Request for Proposals, awards may be made to more than one bidder/offeror (*Code of Virginia*, § 2.2-4301). This is appropriate in situations where the award of a single contract would be impractical and awards are limited to the least number of suppliers necessary for a workable contract program.

Negotiation: A bargaining process between two or more parties, each with its own viewpoints and objectives, seeking to reach an agreement, or settlement of, a matter of common concern, on terms that are mutually beneficial and satisfactory to both.

Non-Competitive Negotiation: The process of arriving at an agreement through discussion and compromise, when only one source is practicably available.

Nonprofessional Services: Any services not specifically identified as professional services in the definition of professional services (*Code of Virginia*, § 2.2-4301).

Order/Ship Time (OST): Order/Ship Time is the time after award required by suppliers to fill an order and ship by designated means (truck, rail, or air) to the delivery point.

Payment Bond, For Labor and Material: A bond required of a contractor to assure fulfillment of the contractor's obligation to pay all persons supplying labor or materials in the performance of the work provided for in the contract.

Performance Bond: A contract of guarantee executed in the full sum of the contract amount subsequent to award by a successful bidder to protect the government from loss due to his/her inability to complete the contract in accordance with its terms and conditions.

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Potential Bidder or Offeror: A person who, at the time an agency awards or proposes to award a contract, is engaged in the sale or lease of goods, or the sale of services, insurance or construction of the type to be procured under such contract, and who at such time is eligible and qualified in all respects to perform that contract, and who would have been eligible and qualified to submit a bid or proposal had the contract been procured through competitive sealed bidding or competitive negotiation (*Code of Virginia, § 2.2-4301*).

Prequalification: A procedure to prequalify products or vendors and limit consideration of bids or proposals to only those products or vendors which have been prequalified.

Professional Services: Shall mean work performed by an independent contractor within the scope of the practice of accounting, actuarial services, architecture, land surveying, landscape architecture, dentistry, law, medicine, optometry, pharmacy, or professional engineering. “Professional Services” shall also include services of an economist procured by the State Corporation Commission (*Code of Virginia, § 2.2-4301*).

Proprietary Specification: A specification that restricts the acceptable product(s) or service(s) to that of one or more manufacturer(s) or vendor(s). A common example would be the use of a “brand name” specification that would exclude consideration of proposed “equals.” Although all sole source specifications are proprietary, all proprietary specifications are not sole source. Proprietary items may be available from several distributors through competitive bidding.

Protest: A written complaint about an administrative action or decision brought by a bidder or offeror to the appropriate administrative section with the intention of receiving a remedial result.

Public Bid Opening: The process of opening and reading bids at the time and place specified in the Invitation for Bids and in the presence of anyone who wishes to attend.

Public Body: In the context of this manual, any state-funded agency that is required to follow the provisions of the *Code of Virginia* and the *Virginia Public Procurement Act (VPPA)*, in the course of their procurement activities.

Public Telecommunications Services: Public telecommunications are non-commercial educational or cultural radio and television programs and related instructional or informational material that may be transmitted by means of electronic communications (see also “Telecommunications Services”).

Qualified Contractors List (QCL): A list of contractors whose capability to provide a service has been evaluated and approved based on written prequalification procedures.

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Qualified Products List (QPL): A list of products that have been tested and approved based on written prequalification procedures.

Request for Information (RFI): An informal document issued when an agency is not aware of the products available in the market which may satisfy its requirements. The use of an RFI does not require a purchase requisition, however a RFI may result in the development of a requisition, or the issuance of an IFB or RFP after an agency determines the types of products that are available which will satisfy its requirements. An RFI cannot be made into an agreement.

Request for Proposals (RFP): All documents, whether attached or incorporated by reference, utilized for soliciting proposals; the RFP procedure requires negotiation with offerors (to include prices) as distinguished from competitive bidding when using an Invitation for Bids.

Responsible Bidder or Offeror: A person or firm who has the capability, in all respects, to perform fully the contract requirements and the moral and business integrity and reliability which will assure good faith performance, and who has been prequalified, if required (*Code of Virginia*, § 2.2-4301). A Responsible bidder is determined as an industry partner which:

- is a regular dealer, supplier or an authorized dealer of the goods or services offered;
- has the ability to comply with the required delivery or performance schedule, taking into consideration other business commitments;
- has a satisfactory record of performance;
- has a satisfactory record of integrity
- has the necessary facilities, organization, experience, technical skills and financial resources to fulfill the terms of the purchase order or contract.

Responsive Bidder: A person or firm who has submitted a bid which conforms in all material respects to the Invitation for Bids (*Code of Virginia*, § 2.2-4301). To be considered for an award, a bid must comply with the terms and conditions and specifications of the IFB. Failure to comply with the requirements set forth in the IFB may result in a bid being declared unresponsive; however the VPPA provides that a public body may waive informalities in a bid. (*Code of Virginia* §2.2-4319(b)) “Informality is defined in the VPPA as “a minor defect or variation of a bid or proposal from the exact requirements of the IFB or RFP, which does not affect the PRICE, QUALITY, QUANTITY OR DELIVERY SCHEDULE for the goods, services or construction being procured.” For example, failure to sign a bid, or to return the required bid documents, substitution of vendor’s terms, deletion of terms and conditions stated in the invitation for bids, failure to offer a product or service that meets the requirements of the invitation for bids, etc. will be grounds for a bid to be determined nonresponsive.

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Restocking Charge: Charges incurred by a purchasing agency for any material goods that are returned to a vendor or seller and are associated with the normal cost and expense that must be incurred by the vendor for accepting the return of an item to inventory

Reverse auctioning: Means a procurement method wherein bidders are invited to bid on specified goods or nonprofessional services through real-time electronic bidding, with the award being made to the lowest responsive and responsible bidder. During the bidding process, bidders' prices are revealed and bidders shall have the opportunity to modify their bid prices for the duration of the time period established for bid opening. The purchase of goods or nonprofessional services, but not construction or professional services, may be made by reverse auctioning.

Sealed Bid: A bid which has been submitted in a sealed envelope to prevent its contents from being revealed or known before the deadline for the submission and opening of all bids.

Secretary: means the Secretary of Technology.

Services: Services are any activities performed by an independent contractor wherein the service rendered does not consist primarily of acquisition of equipment or materials, or the rental of equipment, materials and supplies (*Code of Virginia, § 2.2-4301*).

Small Business: Corporation, partnership, sole proprietorship, or other legal entity formed for the purpose of making a profit, which is independently owned and operated, has either fewer than 100 employees or less than \$1,000,000 in annual gross receipts.

Software: All applications software, whether packaged or requiring development, and all systems software such as assemblers, compilers, CPU performance measurement systems, database management systems, file back-up and recovery, job accounting, operating systems, programming aids and development systems and soft-merge utilities.

Sole Source: A product or service which is practicably available only from one source.

Solicitation: An Invitation for Bids (IFB), a Request for Proposals (RFP), telephone calls, or any other document issued by the state to obtain bids or proposals for the purpose of entering into a contract.

Special Terms and Conditions: Special clauses pertaining to a specific procurement which may supplement or in some cases supersede one or more general terms and conditions, e.g., Award Clause, Extension of Contract.

Spot Purchase: A one-time purchase made in the open market. If it is under the small purchase threshold, it will be made in accordance with the applicable small purchase procedures. If it is over the small purchase threshold, it will be made by competitive sealed bidding or by an exception thereto authorized by law.

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State ADP Contracts: State ADP contracts are executed by the Department of Information Technology's (DIT) Office of Acquisition Services (OAS) on behalf of all agencies, institutions and localities of the Commonwealth of Virginia. With the exception of Telecommunications Services Contracts, unless otherwise stated in an individual contract, state ADP agreements executed by DIT are not mandatory.

State agency or agency: means any agency, institution, board, bureau, commission, council, or instrumentality of state government in the executive branch.

Surplus Property: Property which is in excess of the needs of an agency and which is not required for its foreseeable need. The property may be used or new, but possess some usefulness for the purpose for which it was intended or for some other purpose. It includes scrap, which is material that is damaged, defective, or deteriorated to the extent that it has no value except for its basic material content. Surplus Property must be disposed of in accordance with § 2.2-1124 of the *Code of Virginia*.

Technical Proposal: An unpriced proposal which sets forth in detail that which a vendor proposes to furnish in response to a solicitation.

Technical Specifications: Specifications that establish the material and performance requirements of goods and services.

Technology: The hardware and software operated by an organization to support the flow or processing of information in support of business activities, regardless of the technology involved, whether computers, telecommunications, or other.

Technology infrastructure: means telecommunications, automated data processing, word processing and management information systems, and related information, equipment, goods and services.

Telecommunications: means any origination, transmission, emission, or reception of signals, writings, images, and sounds or intelligence of any nature, by wire, radio, television, optical or other electromagnetic systems.

Telecommunications Equipment: Defined as, but not limited to: channel service units, data compression units, line drivers, bridges, routers, and Asynchronous Transfer Mode switches (ATM), multiplexers and modems. Also, private branch exchanges (PBX), Integrated Services Digital Network (ISDN) terminal equipment, voice mail units, automatic call distribution (ACD), voice processing units and key systems. Video communications products such as: coders, multi-point conferencing units and inverse multiplexers.

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Telecommunications facilities: means apparatus necessary or useful in the production, distribution, or interconnection of electronic communications for state agencies or institutions including the buildings and structures necessary to house such apparatus and the necessary land.

Telecommunications Services: These services include, but are not limited to; data communication services, such as point-to-point and multipoint circuits, Internet, Frame Relay SMDS, ATM, and dial up lines, and voice communications services such as Centrex, business/private lines and WATS lines including 800 services, tie and access lines, long distance services, voice mail, pay phones, wireless communications and cellular services (see also “Public Telecommunications Services”).

Term Contracting: A technique by which a source of supply is established for a specific period of time. Term contracts are established based on indefinite quantities to be ordered “as needed,” although such contracts can specify definite quantities with deliveries extended over the contract period.

Termination for Convenience: The termination by a Commonwealth purchasing office, at its discretion, of the performance of work in whole or in part and makes settlement of the contractor’s claims in accordance with appropriate policy and procedures.

Termination For Default: Action taken by a purchasing office to order a contractor to cease work under the contract, in whole or in part, because of the contractor’s failure to perform in accordance with the contract’s terms and conditions.

Total Cost of Ownership (TCO): A calculation of the fully burdened cost of owning a component. The calculation helps consumers and enterprise managers assess both direct and indirect costs and benefits related to the purchase of IT components. For the business purchase of a computer, the fully burdened costs can also include such things as service and support, networking, security, user training, and software licensing

Unsealed Bid: An unsealed written offer conveyed by U. S. Mail, commercial courier service, facsimile, e-mail, or other means. The bids are normally opened and recorded as received.

Value Analysis: A systematic and objective evaluation of the value of a good or service, focusing on an analysis of function relative to the cost of manufacturing or providing the item or service. Value analysis provides insight into the inherent worth of the final good or service, possibly altering specification and quality requirements that could reduce costs without impairing functional suitability.

Virginia Public Procurement Act: Chapter 43 of Title 2.2, *Code of Virginia*, which enunciates the public policies pertaining to governmental procurement from nongovernmental sources.

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Woman-owned/controlled Business: A for profit business enterprise that is at least 50 percent (50%) owned or controlled by females or in the case of a publicly owned business at least 51 percent (51%) of the stock of which is owned by females.